



OFFICE OF PUBLIC INSTRUCTION

PO BOX 202501
HELENA MT 59620-2501
www.opi.state.mt.us
(406) 444-3095
(888) 231-9393
(406) 444-0169 (TTY)

Linda McCulloch
Superintendent

September 2007

Dear Friends:

I am pleased to provide the *School Laws of Montana 2007*, a compilation of Montana statutory law affecting our schools. This is a biennial publication of the Office of Public Instruction, and I know from personal experience that it serves as an important resource for county superintendents, trustees, district superintendents, teachers, state employees, and anyone else who works in or has an interest in Montana's public schools.

My staff and I are always looking for ways to improve our service to you. We welcome your comments and suggestions about how to improve this book. Please send your suggestions to the address above or to my e-mail at OPISupt@mt.gov.

I sincerely hope that you find this volume a helpful and often-used resource. I look forward to hearing from you and working with you in the coming years!

A handwritten signature in cursive script that reads "Linda McCulloch".

"It is our mission to advocate, communicate, educate and be accountable to those we serve."

PREFACE

Superintendent of Public Instruction Linda McCulloch offers this compilation, *School Laws of Montana 2007*, pursuant to Mont. Code Ann. §20-3-105(5) (2007). This volume contains Montana statutory law affecting schools, including acts of the 60th Montana Legislature of 2007 in regular session and special session.

Arrangement and Scope

School Laws of Montana, like the Montana Code Annotated (MCA), is arranged topically. Title 13, for example, contains most of the laws pertaining to elections. The legal staff of the Office of Public Instruction (OPI) attempted to include Montana statutory law that directly applies to Montana schools in this volume. It does not, of course, include all laws passed by the legislature, approved by the governor, and codified in the MCA. You may access the entire MCA on-line at <http://www.opi.mt.gov/masterMCASearch.html>. Please do not rely exclusively on this one volume compilation; other code sections not included in this volume may apply to your particular legal question.

Numbering System

The Montana code uses a three-element numbering system. (For example, Mont. Code Ann. §20-1-101.) The number to the far left designates the title number, the number between the hyphens designates the chapter number, and the number to the right designates the part and section number. Numbering is sequential, but numbers both within chapters and parts and between titles have been skipped (“reserved”) to leave room for future expansion.

Annotations

The annotations to the code include the legislative history of the code section and cross-references to administrative rules, case notes, and attorney general opinions. Given space constraints, we were unable to include a full set of annotations for the code sections included in the *School Laws of Montana*. We included history annotations and statutory cross-references for Title 20 (Education) and history annotations for the other titles. The full set of annotations for each title is updated biennially and appears in separate volumes published by the Montana Code Commissioner.

Abbreviations The following abbreviations are used in the annotations.

Ad. – Adopted	I.M. No. – Initiative Measure Number
amd. – Amended	L. – Laws of
Ap.p. – Appears in part	MCA – Montana Code Annotated
C. – Code	p. – Page
C. Civ. Proc. – Code of Civil Procedure	Pen. C. – Penal Code
Cal. – California	Pol. C. – Political Code
Ch. – Chapter	R.C.M. – Revised Codes of Montana
Civ. C. – Civil Code	redes. – Redesignated
Cod. – Codified	re-en. – Reenacted
Comp. – Compiled	Ref. No. – Referendum Number
Const. Amend. No. – Constitutional Amendment Number	rep. – Repealed
Div. – Division	Rev. – Revised
En. – Enacted	Sec. – Section
Exec. Ord. – Executive Order	Sp. L. – Special Session Laws
Field – Field Code of New York	Stat. – Statutes
	Sup. Ct. Ord. – Supreme Court Order

Web Page

You may find the following Web pages useful in supplementing this compilation. This is by no means a comprehensive list of legal or education related Web pages, and OPI does not endorse any particular page.

Codes and Laws of Other States, <http://www.law.cornell.edu/states/listing.html>
 Congress: Representative Dennis Rehberg, <http://www.house.gov/rehberg>
 Congress: Senator Max Baucus, <http://baucus.senate.gov>
 Congress: Senator Jon Tester, <http://tester.senate.gov/>
 Council for Exceptional Children, <http://www.cec.sped.org/>
 Education Departments of the States,
 http://wdcrobcolp01.ed.gov/Programs/EROD/org_list.cfm?category_ID=SEA
 FERPA Information from DOE, <http://www.ed.gov/offices/OII/fpco/ferpa/>
 FindLaw, <http://www.findlaw.com/>
 IDEA '97 Final Regulations, http://www.cec.sped.org/law_res/doc/law/index
 Law Library, <http://www.lawlibrary.mt.gov/>
 Law.com, <http://www.law.com/>
 Legal Information Institute, Cornell University, <http://www.law.cornell.edu/>
 Montana Board of Public Education, <http://www.bpe.mt.gov>
 Montana Commissioner of Higher Education, <http://www.mus.edu/>
 Montana Constitution, http://leg.mt.gov/css/mtcode_const/const.asp
 Montana Legal Services Association, <http://montanalawhelp.org>
 Montana Legislative Branch, <http://leg.mt.gov/>
 Montana MEA-MFT, <http://www.mea-mft.org/>
 Montana Office of Public Instruction, <http://www.opi.mt.gov/>
 Montana Rural Education Association, <http://www.mrea-mt.org/>
 Montana School Boards Association, <http://www.mtsba.org/>
 Montana State Government, <http://www.mt.gov/default.asp>
 Montana State Law Library, <http://www.lawlibrary.mt.gov/>
 Montana State Government Telephone Directory, <http://www.mt.gov/govt/statedir.asp>
 Montana State University Library, <http://www.lib.montana.edu>
 National School Boards Association, <http://www.nsba.org/>
 Office of Public Instruction, <http://www.opi.mt.gov/>
 School Administrators of Montana, <http://www.sammt.org>
 SchoolLaw.com, <http://www.schoollaw.com/>
 State Bar of Montana, <http://www.montanabar.org/>
 State Reporter Publishing Company, <http://www.statereporter.com/>
 Thomas, Legislative Information from the Library of Congress, <http://thomas.loc.gov/>
 United States Supreme Court Decisions,
 <http://www.supremecourtus.gov/opinions/opinions.html>
 United States Code of Federal Regulations, <http://www.gpoaccess.gov/cfr/index.html>
 United States Code, <http://www4.law.cornell.edu/uscode/>
 United States Constitution, <http://lcweb2.loc.gov/const/constquery.html>
 United States Court of Appeals for the Ninth Circuit, <http://www.ca9.uscourts.gov/>
 United States Department of Education, <http://www.ed.gov/>
 United States Federal Register, <http://www.gpoaccess.gov/fr/index.html>
 University of Montana Law Library, <http://www.umt.edu/law/library/default.htm>
 University of Montana Mansfield Library, <http://www.lib.umt.edu/>

Expression of Thanks

On behalf of the Superintendent, I wish to extend words of thanks to several who focused a great deal of energy on this compilation. Beverly Marlow, OPI Paralegal, did an exceptional job organizing the material for this compilation and reviewing countless pages of legislative material. I also appreciate the efforts of OPI staff in distributing this book. In particular, thanks go to Linda Brandon-Kjos, Nancy Toole and Clay Hickman. We also greatly appreciate the work of the staff of the Legislative Services Division, in particular Ann Patten, Kevin Hayes, and Kip Davis. Thank you, also, to the Montana Association of School Business Officials for allowing us to insert the "School Laws Ready Reference" found in its directory. Finally, a sincere word of thanks to those who offered constructive criticism; your feedback helps us make this a more useful resource.

Kathleen Magone, Chief Legal Counsel
 Montana Office of Public Instruction
 1227 11th Avenue
 P.O. Box 202501
 Helena, MT 59620-2501

Tel: 406-444-4402
 Fax: 406-444-2893
 E-Mail: kmagone@mt.gov

The Office of Public Instruction is committed to equal employment opportunity and non-discriminatory access to all our programs and services. For information or to file a complaint, contact Kathy Bramer, OPI Title IX/EEO Coordinator at (406) 444-3161 or kbramer@mt.gov.

QUICK REFERENCE GUIDE

Index to Most-Questioned Topics

Courtesy of the Montana Association of School Business Officials

You may access the entire Montana Code Annotated on-line at:
<http://www.opi.mt.gov/masterMCASearch.html>

You may access the Montana Administrative Rules on-line at:
<http://arm.sos.mt.gov/>

Subject	Mont. Code Ann. Citation	Page
Accreditation	20-7-101 . . .	537
Additional Levy	20-9-353	612
Adult Education	20-7-701	560
Adult Education Fund	20-7-705	561
ANB	20-9-311	597
	See also ARM 10.20.102 - 104	
Appeals		
Teacher Termination	20-4-204	478
Board Decision	20-3-210 & 20-3-107	450, 445
Attendance / Pupils	20-5-103	487
Attendance Agreement	20-5-314 . . .	492
Audits	2-7-503 & 20-9-203	81, 582
Bid Requirements	18-1-102	275
Bids	20-9-204	583
Bonds (and Election)	20-9-401	617
Budget Definitions – “BASE”, etc	20-9-306	593
Budget Amendment	20-9-161 . . .	578
	See also ARM 10.22.201	
Building Reserve Fund	20-9-502	636
Bus Depreciation Fund	20-10-147	669
Bus Purchase	20-10-110	657
Certification of Teachers	20-4-101 . . .	467
Charge/Minutes’ Copies	20-3-323 (2)	456
Child Abuse	41-3-101 . . .	744
Clearing Accounts	20-9-220	588
	See also ARM 10.10.2xx	
Clerk	20-3-325	458
Collective Bargaining	39-31-101 . . .	723
Compensated Absence Liability Fund	20-9-512	640
Conflict of Interest	20-9-204	583
Corporal Punishment	20-4-302	481
County Treasurer	20-9-212	586
County Superintendent	20-3-201	446
Definitions – Base	20-9-306	593
Definitions	See also ARM 10.15.101	
Destruction of Records	20-1-212	427
Dist. Sup. / Principal	20-4-401 . . .	482
District Legal Classification		
Elementary	20-6-201	512
High School	20-6-301	514
District Clerk	20-3-325	458

QUICK REFERENCE GUIDE

vi

Early Graduation	20-9-313	600
Education	Title 20	421
Education Definitions	20-1-101	422
Election Notice	20-20-204	692
Election Procedures	13-1-101 . . .	171
	20-20-101 . . .	689
Elementary District	20-6-201	512
Emergency Closure	20-9-801 . . .	652
Endowments	20-9-604	645
Equalization	20-9-302	591
Expulsion	20-5-201	490
Extracurricular Fund	20-9-504	638
Field Trips/First Aid Requirement	ARM 37.111.825(4)(a)	
Final Budget Meeting	20-9-131	575
Finance	Title 20, Chapter 9	569
Fire Drills	20-1-401	431
Fire Safety	50-61-101	868
Food Services / Fund	20-10-201 . . .	669
General Fund Reserve	20-9-104	573
Gifted and Talented	20-7-901	563
Guaranteed Tax Base	20-9-367	614
	See also ARM 10.21.101A - 105	
Health	20-5-402	498
High School District	20-6-301	514
Immunization Laws	20-5-403 . . .	498
Impact Aid Fund	20-9-514	641
Increased State Aid	See also ARM 10.20.201 - 202	
Individual Transportation	20-10-142	664
	See also ARM 10.7.105 - 106	
Interlocal Co-op Agreement Fund	20-9-511	640
Isolation Status	20-9-302 & 303	591, 592
	See also ARM 10.30.101 - 102	
K-12 School Districts	20-6-701	532
	See also ARM 10.30-402 - 407	
Land Transfer		
Elementary District	20-6-105	509
High School District	20-6-105	509
Lease/Rental Agreement Fund	20-9-509	640
Levy (over base budget authority)	20-9-353	612
Levy Elections	20-20-103	690
	See also ARM 10.23.103	
Mail Ballot Election	Title 13, Chapter 19	228
	Title 20, Chapter 20	688
Mileage Allowance	2-18-503	124
Military Service Employment Rights	10-1-1001. . .	165
Minors (Child Labor Standards)	41-2-102 . . .	739
Minutes	20-3-323	456
Misc. Programs Fund	20-9-507	639
Nepotism	2-2-301 & 304	53, 54
Non-tenure	20-4-206	479
Open Meeting	2-3-201	57

P.E.R.S.	19-1-104	320
Principal	20-4-403	484
Property/ Sale or Disposal	20-6-603 . . .	527
Public Records	2-6-401	77
Public Contracts	Title 18	274
Pupils	Title 20, Chapter 5	485
Reserves	See also ARM 10.22.103	
Residence	1-1-215	30
Retirement Fund	20-9-501	634
Retirement System (TRS/PERS)	Title 19	319
Safety Culture Act	See Administrative Rules	
Saturday School	20-1-303	429
School Bus Driver Qualifications	20-10-103	655
School Property	20-6-602 & 604	527, 528
School Holidays	20-1-305	430
School Election	20-20-101 & 204	689, 692
Site Elections (Bldg Plans)	20-6-621 & 624	529, 530
Smoking in Public Places	20-1-220	428
Special Education	20-7-401 . . .	545
State Superintendent	20-3-101	442
Suspension	20-5-201	490
T.R.S.	19-20-101	382
Tax Increase Notice	15-10-203	254
Teachers Duties	20-4-301	481
Teacher Tenure/Termination	20-4-203 . . .	477
Tenure	20-4-203	477
Testing (Student)	20-2-121(12)	435
Release by OPI	20-3-106(27)	445
Release by District	20-3-324(25)	458
Textbooks	20-1-101	422
Tobacco Use/Schools	20-1-220	428
Traffic Education Fund	20-9-510	640
Transfer of Territory (EL)	20-6-105, 417	509, 519
Transfer of Territory (HS)	20-6-105, 308, & 417	509, 515, 519
Transportation	20-10-101 & 146	654, 668
	See also ARM 10.7.101 - 118	
Transportation Payment Schedule	See also ARM 10.7.114	
Trustees Duties, etc.	20-3-324	457
Trustee Elections	20-3-301 & 309	452, 454
Trustee Resignations	2-16-502	113
Trustee Financial Duties	20-9-213	587
Trustee Vacancy	20-3-309	454
Tuberculosis Testing	ARM 37.114.1010	
Veterans' Preference	39-29-101	721
Vocational Education	20-7-301	541
Voter Instructions	20-3-306	453
Warrants	20-9-221 . . .	589
Websites	See Preface	

TABLE OF CONTENTS

Preface	ii
Quick Reference Guide	v
The Constitution of the State of Montana	1

Parts or all of the following Mont. Code Ann. chapters are included in this compilation

TITLE 1 – GENERAL LAWS AND DEFINITIONS

Ch. 1	General Provisions	27
Ch. 2	Statutory Construction	35
Ch. 6	Oaths	40

TITLE 2 – GOVERNMENT STRUCTURE AND ADMINISTRATION

Ch. 1	Sovereignty and Jurisdiction	40
Ch. 2	Standards of Conduct	44
Ch. 3	Public Participation in Governmental Operations	54
Ch. 4	Administrative Procedure Act	59
Ch. 6	Public Records	70
Ch. 7	Studies, Reports, and Audits	79
Ch. 9	Liability Exposure and Insurance Coverage	86
Ch. 11	Legal Authority for Government Action	100
Ch. 15	Executive Branch Officers and Agencies	101
Ch. 16	Public Officers	108
Ch. 17	Property and Systems Development and Management	120
Ch. 18	State Employee Classification, Compensation, and Benefits	123

TITLE 7 – LOCAL GOVERNMENT

Ch. 1	General Provisions	138
Ch. 4	Officers and Employees	139
Ch. 5	General Operation and Conduct of Business	144
Ch. 6	Financial Administration and Taxation	145
Ch. 7	Debt Management	155
Ch. 8	Acquisition, Transfer, and Management of Property and Buildings	160
Ch. 11	General Provisions Related to Services	162
Ch. 16	Culture, Social Services, and Recreation	165

TITLE 10 – MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES

Ch. 1	Militia	165
-------	---------------	-----

TITLE 13 – ELECTIONS

Ch. 1	General Provisions	171
Ch. 2	Registration of Electors	179
Ch. 3	Precincts and Polling Places	187
Ch. 4	Election Judges	191
Ch. 10	Primary Elections and Nominations	193
Ch. 12	Election Supplies and Ballots	194
Ch. 13	Election Procedure	198
Ch. 14	Nonpartisan Elections	209
Ch. 15	Canvassing, Returns, and Certificates	211
Ch. 16	Recounts and Tie Votes	219
Ch. 17	Voting Machines	224
Ch. 19	Mail Ballot Systems	228
Ch. 21	Montana Absent Uniformed Services and Overseas Elector Voting Act	234
Ch. 22	Youth Voting Act	239
Ch. 36	Contests	240

TITLE 15 – TAXATION

Ch. 1	Tax Administration.....	244
Ch. 7	Appraisal	253
Ch. 10	Property Tax Levies	253
Ch. 16	Collection of Property Taxes	257
Ch. 23	Centrally Assessed Property.....	258
Ch. 24	Special Property Tax Applications.....	261
Ch. 35	Coal Severance Tax.....	267
Ch. 36	Oil and Gas Production Tax.....	269
Ch. 37	Mining License Taxes	270
Ch. 70	Gasoline and Vehicle Fuels Taxes	271

TITLE 17 – STATE FINANCE

Ch. 3	Federal Revenues and Endowments	272
-------	---------------------------------------	-----

TITLE 18 – PUBLIC CONTRACTS

Ch. 1	Public Contracts Generally	274
Ch. 2	Construction Contracts	280
Ch. 4	Montana Procurement Act.....	298
Ch. 5	Special Purchasing Conditions	312
Ch. 6	Sales	313
Ch. 8	Procurement of Services	314
Ch. 11	State-Tribal Cooperative Agreements	316

TITLE 19 – PUBLIC RETIREMENT SYSTEM

Ch. 1	Social Security	319
Ch. 2	Public Employees' Retirement General Provisions	327
Ch. 3	Public Employees' Retirement System.....	350
Ch. 20	Teachers' Retirement	382
Ch. 50	Deferred Compensation	417

TITLE 20 – EDUCATION

Ch. 1	General Provisions	421
Ch. 2	State Boards and Commissions	433
Ch. 3	Elected Officials	440
Ch. 4	Teachers, Superintendents, and Principals.....	466
Ch. 5	Pupils.....	485
Ch. 6	School Districts	506
Ch. 7	School Instruction and Special Programs.....	534
Ch. 8	Montana School for the Deaf and Blind	565
Ch. 9	Finance	569
Ch. 10	Transportation and Food Services.....	653
Ch. 15	Community College Districts.....	672
Ch. 20	School Elections	688
Ch. 25	University System.....	695
Ch. 32	Montana Educational Telecommunications Network.....	696

TITLE 22 – LIBRARIES, ARTS AND ANTIQUITIES

Ch. 1	Libraries	698
-------	-----------------	-----

TITLE 26 – EVIDENCE

Ch. 1	Statutory Provisions on Evidence.....	704
-------	---------------------------------------	-----

TITLE 32 – FINANCIAL INSTITUTIONS

Ch. 1	Banks and Trust Companies	706
-------	---------------------------------	-----

TITLE 37 – PROFESSIONS AND OCCUPATIONS

Ch. 8	Nursing.....	706
Ch. 11	Physical Therapy.....	709
Ch. 15	Speech-Language Pathologists and Audiologists	709
Ch. 23	Professional Counseling.....	711

TABLE OF CONTENTS

x

Ch. 24	Occupational Therapy	712
Ch. 25	Nutritionists	712
Ch. 36	Athletic Trainers	713
Ch. 48	Private Alternative Adolescent Residential or Outdoor Programs	715
TITLE 39 – LABOR		
Ch. 2	The Employment Relationship	719
Ch. 4	Hours of Labor in Certain Employments	720
Ch. 29	Veterans' Public Employment Preference	721
Ch. 31	Collective Bargaining for Public Employees	723
TITLE 40 – FAMILY LAW		
Ch. 4	Termination of Marriage, Child Custody, Support	733
Ch. 6	Parent and Child	733
TITLE 41 – MINORS		
Ch. 1	Rights and Obligations of Minors	739
Ch. 2	Child Labor	739
Ch. 3	Child Abuse and Neglect	744
Ch. 5	Youth Court Act	776
TITLE 44 – LAW ENFORCEMENT		
Ch. 2	Investigation, Communication, and Identification	826
TITLE 45 – CRIMES		
Ch. 5	Offenses Against the Person	829
Ch. 8	Offenses Against Public Order	830
Ch. 9	Dangerous Drugs	833
TITLE 49 – HUMAN RIGHTS		
Ch. 1	Basic Rights	834
Ch. 2	Illegal Discrimination	835
Ch. 3	Governmental Code of Fair Practices	850
Ch. 4	Rights of Persons with Disabilities	854
TITLE 50 – HEALTH AND SAFETY		
Ch. 1	Administration of Public Health Laws	861
Ch. 3	State Fire Prevention and Investigation Program	865
Ch. 40	Smoking in Public Places	866
Ch. 61	Fire Safety in Public Buildings	868
Ch. 78	Employee and Community Hazardous Chemical Information Act	872
TITLE 52 – FAMILY SERVICES		
Ch. 1	Administration	877
Ch. 2	Children's Services	878
TITLE 53 – SOCIAL SERVICES AND INSTITUTIONS		
Ch. 21	Mentally Ill	883
TITLE 61 – MOTOR VEHICLES		
Ch. 2	Highway Safety	884
Ch. 5	Driver's Licenses	886
Ch. 8	Traffic Regulation	915
Ch. 9	Vehicle Equipment	918
TITLE 69 – PUBLIC UTILITIES AND CARRIERS		
Ch. 3	Regulation of Utilities	919
TITLE 80 – AGRICULTURE		
Ch. 8	Pesticides	919
TITLE 87 – FISH AND WILDLIFE		
Ch. 1	Organization and Operation	920
General Index		923

THE CONSTITUTION OF THE STATE OF MONTANA

CONSTITUTION OF MONTANA
AS ADOPTED BY THE CONSTITUTIONAL CONVENTION
MARCH 22, 1972, AND AS RATIFIED BY THE PEOPLE,
JUNE 6, 1972, REFERENDUM NO. 68

PREAMBLE

We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this constitution.

ARTICLE I COMPACT WITH THE UNITED STATES

All provisions of the enabling act of Congress (approved February 22, 1889, 25 Stat. 676), as amended and of Ordinance No. 1, appended to the Constitution of the state of Montana and approved February 22, 1889, including the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana.

ARTICLE II DECLARATION OF RIGHTS

Section 1. Popular sovereignty. All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

Section 2. Self-government. The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the constitution and form of government whenever they deem it necessary.

Section 3. Inalienable rights. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

Section 4. Individual dignity. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Section 5. Freedom of religion. The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

Section 6. Freedom of assembly. The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action.

Section 7. Freedom of speech, expression, and press. No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

Section 8. Right of participation. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

Section 9. Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Section 10. Right of privacy. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Section 11. Searches and seizures. The people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures. No warrant to search any place, or seize any person or thing shall issue without describing the place to be searched or the person or thing to be seized, or without probable cause, supported by oath or affirmation reduced to writing.

Section 12. Right to bear arms. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

Section 13. Right of suffrage. All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Section 14. Adult rights. A person 18 years of age or older is an adult for all purposes, except that the legislature or the people by initiative may establish the legal age for purchasing, consuming, or possessing alcoholic beverages.

Section 15. Rights of persons not adults. The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons.

Section 16. The administration of justice. Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state. Right and justice shall be administered without sale, denial, or delay.

Section 17. Due process of law. No person shall be deprived of life, liberty, or property without due process of law.

Section 18. State subject to suit. The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property, except as may be specifically provided by law by a 2/3 vote of each house of the legislature.

Section 19. Habeas corpus. The privilege of the writ of habeas corpus shall never be suspended.

Section 20. Initiation of proceedings. (1) Criminal offenses within the jurisdiction of any court inferior to the district court shall be prosecuted by complaint. All criminal actions in district court, except those on appeal, shall be prosecuted either by information, after examination and commitment by a magistrate or after leave granted by the court, or by indictment without such examination, commitment or leave.

(2) A grand jury shall consist of eleven persons, of whom eight must concur to find an indictment. A grand jury shall be drawn and summoned only at the discretion and order of the district judge.

Section 21. Bail. All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

Section 22. Excessive sanctions. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

Section 23. Detention. No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner provided by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof.

Section 24. Rights of the accused. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

Section 25. Self-incrimination and double jeopardy. No person shall be compelled to testify against himself in a criminal proceeding. No person shall be again put in jeopardy for the same offense previously tried in any jurisdiction.

Section 26. Trial by jury. The right of trial by jury is secured to all and shall remain inviolate. But upon default of appearance or by consent of the parties expressed in such manner as the law may provide, all cases may be tried without a jury or before fewer than the number of jurors provided by law. In all civil actions, two-thirds of the jury may render a verdict, and a verdict so rendered shall have the same force and effect as if all had concurred therein. In all criminal actions, the verdict shall be unanimous.

Section 27. Imprisonment for debt. No person shall be imprisoned for debt except in the manner provided by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

Section 28. Criminal justice policy — rights of the convicted. (1) Laws for the punishment of crime shall be founded on the principles of prevention, reformation, public safety, and restitution for victims.

(2) Full rights are restored by termination of state supervision for any offense against the state.

Section 29. Eminent domain. Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails.

Section 30. Treason and descent of estates. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislature; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

Section 31. Ex post facto, obligation of contracts, and irrevocable privileges. No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.

Section 32. Civilian control of the military. The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner provided by law.

Section 33. Importation of armed persons. No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the legislature, or of the governor when the legislature cannot be convened.

Section 34. Unenumerated rights. The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

Section 35. Servicemen, servicewomen, and veterans. The people declare that Montana servicemen, servicewomen, and veterans may be given special considerations determined by the legislature.

ARTICLE III GENERAL GOVERNMENT

Section 1. Separation of powers. The power of the government of this state is divided into three distinct branches—legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

Section 2. Continuity of government. The seat of government shall be in Helena, except during periods of emergency resulting from disasters or enemy attack. The legislature may enact laws to insure the continuity of government during a period of emergency without regard for other provisions of the constitution. They shall be effective only during the period of emergency that affects a particular office or governmental operation.

Section 3. Oath of office. Members of the legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: “I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God).” No other oath, declaration, or test shall be required as a qualification for any office or public trust.

Section 4. Initiative. (1) The people may enact laws by initiative on all matters except appropriations of money and local or special laws.

(2) Initiative petitions must contain the full text of the proposed measure, shall be signed by at least five percent of the qualified electors in each of at least one-half of the counties and the total number of signers must be at least five percent of the total qualified electors of the state. Petitions shall be filed with the secretary of state at least three months prior to the election at which the measure will be voted upon.

(3) The sufficiency of the initiative petition shall not be questioned after the election is held.

Section 5. Referendum. (1) The people may approve or reject by referendum any act of the legislature except an appropriation of money. A referendum shall be held either upon order by the legislature or upon petition signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts. The total number of signers must be at least five percent of the qualified electors of the state. A referendum petition shall be filed with the secretary of state no later than six months after adjournment of the legislature which passed the act.

(2) An act referred to the people is in effect until suspended by petitions signed by at least 15 percent of the qualified electors in a majority of the legislative representative districts. If so suspended the act shall become operative only after it is approved at an election, the result of which has been determined and declared as provided by law.

Section 6. Elections. The people shall vote on initiative and referendum measures at the general election unless the legislature orders a special election.

Section 7. Number of electors. (1) The number of qualified electors required in each legislative representative district and in the state shall be determined by the number of votes cast for the office of governor in the preceding general election.

(2) For the purposes of a constitutional amendment, the number of qualified electors in each county and in the state shall be determined by the number of votes cast for the office of governor in the preceding general election.

(3) For the purposes of a statutory initiative, the number of qualified electors required in each county and in the state shall be determined by the number of votes cast for the office of governor in the preceding general election.

Section 8. Prohibition. The provisions of this Article do not apply to CONSTITUTIONAL REVISION, Article XIV.

Section 9. Gambling. All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum.

ARTICLE IV SUFFRAGE AND ELECTIONS

Section 1. Ballot. All elections by the people shall be by secret ballot.

Section 2. Qualified elector. Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.

Section 3. Elections. The legislature shall provide by law the requirements for residence, registration, absentee voting, and administration of elections. It may provide for a system of poll booth registration, and shall insure the purity of elections and guard against abuses of the electoral process.

Section 4. Eligibility for public office. Any qualified elector is eligible to any public office except as otherwise provided in this constitution. The legislature may provide additional qualifications but no person convicted of a felony shall be eligible to hold office until his final discharge from state supervision.

Section 5. Result of elections. In all elections held by the people, the person or persons receiving the largest number of votes shall be declared elected.

Section 6. Privilege from arrest. A qualified elector is privileged from arrest at polling places and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace.

Section 7. Ballot issues — challenges — elections. (1) An initiative or referendum that qualifies for the ballot under Article III or Article XIV shall be submitted to the qualified electors as provided in the Article under which the initiative or referendum qualified unless a new election is held pursuant to this section.

(2) A preelection challenge to the procedure by which an initiative or referendum qualified for the ballot or a postelection challenge to the manner in which the election was conducted shall be given priority by the courts.

(3) If the election on an initiative or referendum properly qualifying for the ballot is declared invalid because the election was improperly conducted, the secretary of state shall submit the issue to the qualified electors at the next regularly scheduled statewide election unless the legislature orders a special election.

Section 8. Limitation on terms of office. (1) The secretary of state or other authorized official shall not certify a candidate's nomination or election to, or print or cause to be printed on any ballot the name of a candidate for, one of the following offices if, at the end of the current term of that office, the candidate will have served in that office or had he not resigned or been recalled would have served in that office:

(a) 8 or more years in any 16-year period as governor, lieutenant governor, secretary of state, state auditor, attorney general, or superintendent of public instruction;

(b) 8 or more years in any 16-year period as a state representative;

(c) 8 or more years in any 16-year period as a state senator;

(d) 6 or more years in any 12-year period as a member of the U.S. house of representatives; and

(e) 12 or more years in any 24-year period as a member of the U.S. senate.

(2) When computing time served for purposes of subsection (1), the provisions of subsection (1) do not apply to time served in terms that end during or prior to January 1993.

(3) Nothing contained herein shall preclude an otherwise qualified candidate from being certified as nominated or elected by virtue of write-in votes cast for said candidate.

ARTICLE V THE LEGISLATURE

Section 1. Power and structure. The legislative power is vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves the powers of initiative and referendum.

Section 2. Size. The size of the legislature shall be provided by law, but the senate shall not have more than 50 or fewer than 40 members and the house shall not have more than 100 or fewer than 80 members.

Section 3. Election and terms. A member of the house of representatives shall be elected for a term of two years and a member of the senate for a term of four years each to begin on a date provided by law. One-half of the senators shall be elected every two years.

Section 4. Qualifications. A candidate for the legislature shall be a resident of the state for at least one year next preceding the general election. For six months next preceding the general election, he shall be a resident of the county if it contains one or more districts or of the district if it contains all or parts of more than one county.

Section 5. Compensation. Each member of the legislature shall receive compensation for his services and allowances provided by law. No legislature may fix its own compensation.

Section 6. Sessions. The legislature shall meet each odd-numbered year in regular session of not more than 90 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members.

Section 7. Vacancies. A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law.

Section 8. Immunity. A member of the legislature is privileged from arrest during attendance at sessions of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.

Section 9. Disqualification. No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or the militia) under the United States or this state, shall be a member of the legislature during his continuance in office.

Section 10. Organization and procedure. (1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine

contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.

(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislative post-audit committee which shall supervise post-auditing duties provided by law.

(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting.

Section 11. Bills. (1) A law shall be passed by bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose. No bill shall become law except by a vote of the majority of all members present and voting.

(2) Every vote of each member of the legislature on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public. On final passage, the vote shall be taken by ayes and noes and the names entered on the journal.

(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

(4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools. Every other appropriation shall be made by a separate bill, containing but one subject.

(5) No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under control of the state.

(6) A law may be challenged on the ground of noncompliance with this section only within two years after its effective date.

Section 12. Local and special legislation. The legislature shall not pass a special or local act when a general act is, or can be made, applicable.

Section 13. Impeachment. (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be provided by law are subject to impeachment, and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law.

(2) The legislature shall provide for the manner, procedure, and causes for impeachment and may select the senate as tribunal.

(3) Impeachment shall be brought only by a two-thirds vote of the house. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members.

(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

Section 14. Districting and apportionment. (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative districts and a plan for redistricting the state into congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the

fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

(3) Within 90 days after the official final decennial census figures are available, the commission shall file its final plan for congressional districts with the secretary of state and it shall become law.

(4) The commission shall submit its plan for legislative districts to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan for legislative districts with the secretary of state and it shall become law.

(5) Upon filing both plans, the commission is then dissolved.

ARTICLE VI THE EXECUTIVE

Section 1. Officers. (1) The executive branch includes a governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor.

(2) Each holds office for a term of four years which begins on the first Monday of January next succeeding election, and until a successor is elected and qualified.

(3) Each shall reside at the seat of government, there keep the public records of his office, and perform such other duties as are provided in this constitution and by law.

Section 2. Election. (1) The governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor shall be elected by the qualified electors at a general election provided by law.

(2) Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or so otherwise comply with nomination procedures provided by law that the offices of governor and lieutenant governor are voted upon together in primary and general elections.

Section 3. Qualifications. (1) No person shall be eligible to the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, or auditor unless he is 25 years of age or older at the time of his election. In addition, each shall be a citizen of the United States who has resided within the state two years next preceding his election.

(2) Any person with the foregoing qualifications is eligible to the office of attorney general if an attorney in good standing admitted to practice law in Montana who has engaged in the active practice thereof for at least five years before election.

(3) The superintendent of public instruction shall have such educational qualifications as are provided by law.

Section 4. Duties. (1) The executive power is vested in the governor who shall see that the laws are faithfully executed. He shall have such other duties as are provided in this constitution and by law.

(2) The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor. No power specifically vested in the governor by this constitution may be delegated to the lieutenant governor.

(3) The secretary of state shall maintain official records of the executive branch and of the acts of the legislature, as provided by law. He shall keep the great seal of the state of Montana and perform any other duties provided by law.

(4) The attorney general is the legal officer of the state and shall have the duties and powers provided by law.

(5) The superintendent of public instruction and the auditor shall have such duties as are provided by law.

Section 5. Compensation. (1) Officers of the executive branch shall receive salaries provided by law.

(2) During his term, no elected officer of the executive branch may hold another public office or receive compensation for services from any other governmental agency. He may be a candidate for any public office during his term.

Section 6. Vacancy in office. (1) If the office of lieutenant governor becomes vacant by his succession to the office of governor, or by his death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office for the remainder of the term. If both the elected governor and the elected lieutenant governor become unable to serve in the office of governor, succession to the respective offices shall be as provided by law for the period until the next general election. Then, a governor and lieutenant governor shall be elected to fill the remainder of the original term.

(2) If the office of secretary of state, attorney general, auditor, or superintendent of public instruction becomes vacant by death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office until the next general election and until a successor is elected and qualified. The person elected to fill a vacancy shall hold the office until the expiration of the term for which his predecessor was elected.

Section 7. 20 departments. All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive branch (except for the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor) and their respective functions, powers, and duties, shall be allocated by law among not more than 20 principal departments so as to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a department.

Section 8. Appointing power. (1) The departments provided for in section 7 shall be under the supervision of the governor. Except as otherwise provided in this constitution or by law, each department shall be headed by a single executive appointed by the governor subject to confirmation by the senate to hold office until the end of the governor's term unless sooner removed by the governor.

(2) The governor shall appoint, subject to confirmation by the senate, all officers provided for in this constitution or by law whose appointment or election is not otherwise provided for. They shall hold office until the end of the governor's term unless sooner removed by the governor.

(3) If a vacancy occurs in any such office when the legislature is not in session, the governor shall appoint a qualified person to discharge the duties thereof until the office is filled by appointment and confirmation.

(4) A person not confirmed by the senate for an office shall not, except at its request, be nominated again for that office at the same session, or be appointed to that office when the legislature is not in session.

Section 9. Budget and messages. The governor shall at the beginning of each legislative session, and may at other times, give the legislature information and recommend measures he considers necessary. The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail for all operating funds the proposed expenditures and estimated revenue of the state.

Section 10. Veto power. (1) Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for his signature. If he does not sign or veto the bill within 10 days after its delivery to him, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it shall become law.

(4) (a) If the legislature is not in session when the governor vetoes a bill approved by two-thirds of the members present, he shall return the bill with his reasons therefor to the secretary of state. The secretary of state shall poll the members of the legislature by mail and shall send each member a copy of the governor's veto message. If two-thirds or more of the members of each house vote to override the veto, the bill shall become law.

(b) The legislature may reconvene as provided by law to reconsider any bill vetoed by the governor when the legislature is not in session.

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill.

Section 11. Special session. Whenever the governor considers it in the public interest, he may convene the legislature.

Section 12. Pardons. The governor may grant reprieves, commutations and pardons, restore citizenship, and suspend and remit fines and forfeitures subject to procedures provided by law.

Section 13. Militia. (1) The governor is commander-in-chief of the militia forces of the state, except when they are in the actual service of the United States. He may call out any part or all of the forces to aid in the execution of the laws, suppress insurrection, repel invasion, or protect life and property in natural disasters.

(2) The militia forces shall consist of all able-bodied citizens of the state except those exempted by law.

Section 14. Succession. (1) If the governor-elect is disqualified or dies, the lieutenant governor-elect upon qualifying for the office shall become governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor-elect upon qualifying as such shall serve as acting governor until the governor-elect is able to assume office, or until the office becomes vacant.

(2) The lieutenant governor shall serve as acting governor when so requested in writing by the governor. After the governor has been absent from the state for more than 45 consecutive days, the lieutenant governor shall serve as acting governor.

(3) He shall serve as acting governor when the governor is so disabled as to be unable to communicate to the lieutenant governor the fact of his inability to perform the duties of his office. The lieutenant governor shall continue to serve as acting governor until the governor is able to resume the duties of his office.

(4) Whenever, at any other time, the lieutenant governor and attorney general transmit to the legislature their written declaration that the governor is unable to discharge the powers and duties of his office, the legislature shall convene to determine whether he is able to do so.

(5) If the legislature, within 21 days after convening, determines by two-thirds vote of its members that the governor is unable to discharge the powers and duties of his office, the lieutenant governor shall serve as acting governor. Thereafter, when the governor transmits to the legislature his written declaration that no inability exists, he shall resume the powers and duties of his office within 15 days, unless the legislature determines otherwise by two-thirds vote of its members. If the legislature so determines, the lieutenant governor shall continue to serve as acting governor.

(6) If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term, except as provided in this constitution.

(7) Additional succession to fill vacancies shall be provided by law.

(8) When there is a vacancy in the office of governor, the successor shall be the governor. The acting governor shall have the powers and duties of the office of governor only for the period during which he serves.

Section 15. Information for governor. (1) The governor may require information in writing, under oath when required, from the officers of the executive branch upon any subject relating to the duties of their respective offices.

(2) He may require information in writing, under oath, from all officers and managers of state institutions.

(3) He may appoint a committee to investigate and report to him upon the condition of any executive office or state institution.

ARTICLE VII THE JUDICIARY

Section 1. Judicial power. The judicial power of the state is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law.

Section 2. Supreme court jurisdiction. (1) The supreme court has appellate jurisdiction and may issue, hear, and determine writs appropriate thereto. It has original jurisdiction to issue, hear, and determine writs of habeas corpus and such other writs as may be provided by law.

(2) It has general supervisory control over all other courts.

(3) It may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members. Rules of procedure shall be subject to disapproval by the legislature in either of the two sessions following promulgation.

(4) Supreme court process shall extend to all parts of the state.

Section 3. Supreme court organization. (1) The supreme court consists of one chief justice and four justices, but the legislature may increase the number of justices from four to six. A majority shall join in and pronounce decisions, which must be in writing.

(2) A district judge shall be substituted for the chief justice or a justice in the event of disqualification or disability, and the opinion of the district judge sitting with the supreme court shall have the same effect as an opinion of a justice.

Section 4. District court jurisdiction. (1) The district court has original jurisdiction in all criminal cases amounting to felony and all civil matters and cases at law and in equity. It may issue all writs appropriate to its jurisdiction. It shall have the power of naturalization and such additional jurisdiction as may be delegated by the laws of the United States or the state of Montana. Its process shall extend to all parts of the state.

(2) The district court shall hear appeals from inferior courts as trials anew unless otherwise provided by law. The legislature may provide for direct review by the district court of decisions of administrative agencies.

(3) Other courts may have jurisdiction of criminal cases not amounting to felony and such jurisdiction concurrent with that of the district court as may be provided by law.

Section 5. Justices of the peace. (1) There shall be elected in each county at least one justice of the peace with qualifications, training, and monthly compensation provided by law. There shall be provided such facilities that they may perform their duties in dignified surroundings.

(2) Justice courts shall have such original jurisdiction as may be provided by law. They shall not have trial jurisdiction in any criminal case designated a felony except as examining courts.

(3) The legislature may provide for additional justices of the peace in each county.

Section 6. Judicial districts. (1) The legislature shall divide the state into judicial districts and provide for the number of judges in each district. Each district shall be formed of compact territory and be bounded by county lines.

(2) The legislature may change the number and boundaries of judicial districts and the number of judges in each district, but no change in boundaries or the number of districts or judges therein shall work a removal of any judge from office during the term for which he was elected or appointed.

(3) The chief justice may, upon request of the district judge, assign district judges and other judges for temporary service from one district to another, and from one county to another.

Section 7. Terms and pay. (1) All justices and judges shall be paid as provided by law, but salaries shall not be diminished during terms of office.

(2) Terms of office shall be eight years for supreme court justices, six years for district court judges, four years for justices of the peace, and as provided by law for other judges.

Section 8. Selection. (1) Supreme court justices and district court judges shall be elected by the qualified electors as provided by law.

(2) For any vacancy in the office of supreme court justice or district court judge, the governor shall appoint a replacement from nominees selected in the manner provided by law. If the governor fails to appoint within thirty days after receipt of nominees, the chief justice or acting chief justice shall make the appointment from the same nominees within thirty days of the governor's failure to appoint. Appointments made under this subsection shall be subject to confirmation by the senate, as provided by law. If the appointee is not confirmed, the office shall be vacant and a replacement shall be made under the procedures provided for in this section. The appointee shall serve until the election for the office as provided by law and until a successor is elected and qualified. The person elected or retained at the election shall serve until the expiration of the term for which his predecessor was elected. No appointee, whether confirmed or unconfirmed, shall serve past the term of his predecessor without standing for election.

(3) If an incumbent files for election and there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow the voters of the state or district to approve or reject him. If an incumbent is rejected, the vacancy in the office for which the election was held shall be filled as provided in subsection (2).

Section 9. Qualifications. (1) A citizen of the United States who has resided in the state two years immediately before taking office is eligible to the office of supreme court justice or district court judge if admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. Qualifications and methods of selection of judges of other courts shall be provided by law.

(2) No supreme court justice or district court judge shall solicit or receive compensation in any form whatever on account of his office, except salary and actual necessary travel expense.

(3) Except as otherwise provided in this constitution, no supreme court justice or district court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party.

(4) Supreme court justices shall reside within the state. During his term of office, a district court judge shall reside in the district and a justice of the peace shall reside in the county in which he is elected or appointed. The residency requirement for every other judge must be provided by law.

Section 10. Forfeiture of judicial position. Any holder of a judicial position forfeits that position by either filing for an elective public office other than a judicial position or absenting himself from the state for more than 60 consecutive days.

Section 11. Removal and discipline. (1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.

(2) The commission shall investigate complaints, and make rules implementing this section. It may subpoena witnesses and documents.

(3) Upon recommendation of the commission, the supreme court may:

(a) Retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or

(b) Censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, violation of canons of judicial ethics adopted by the supreme court of the state of Montana, or habitual intemperance.

(4) The proceedings of the commission are confidential except as provided by statute.

ARTICLE VIII REVENUE AND FINANCE

Section 1. Tax purposes. Taxes shall be levied by general laws for public purposes.

Section 2. Tax power inalienable. The power to tax shall never be surrendered, suspended, or contracted away.

Section 3. Property tax administration. The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.

Section 4. Equal valuation. All taxing jurisdictions shall use the assessed valuation of property established by the state.

Section 5. Property tax exemptions. (1) The legislature may exempt from taxation:

(a) Property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries, but any private interest in such property may be taxed separately.

(b) Institutions of purely public charity, hospitals and places of burial not used or held for private or corporate profit, places for actual religious worship, and property used exclusively for educational purposes.

(c) Any other classes of property.

(2) The legislature may authorize creation of special improvement districts for capital improvements and the maintenance thereof. It may authorize the assessment of charges for such improvements and maintenance against tax exempt property directly benefited thereby.

Section 6. Highway revenue non-diversion. (1) Revenue from gross vehicle weight fees and excise and license taxes (except general sales and use taxes) on gasoline, fuel, and other energy sources used to propel vehicles on public highways shall be used as authorized by the legislature, after deduction of statutory refunds and adjustments, solely for:

(a) Payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads, and bridges.

(b) Payment of county, city, and town obligations on streets, roads, and bridges.

(c) Enforcement of highway safety, driver education, tourist promotion, and administrative collection costs.

(2) Such revenue may be appropriated for other purposes by a three-fifths vote of the members of each house of the legislature.

Section 7. Tax appeals. The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessments, equalization, and taxes. The legislature shall include a review procedure at the local government unit level.

Section 8. State debt. No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the legislature or a majority of the electors voting thereon. No state debt shall be created to cover deficits incurred because appropriations exceeded anticipated revenue.

Section 9. Balanced budget. Appropriations by the legislature shall not exceed anticipated revenue.

Section 10. Local government debt. The legislature shall by law limit debts of counties, cities, towns, and all other local governmental entities.

Section 11. Use of loan proceeds. All money borrowed by or on behalf of the state or any county, city, town, or other local governmental entity shall be used only for purposes specified in the authorizing law.

Section 12. Strict accountability. The legislature shall by law insure strict accountability of all revenue received and money spent by the state and counties, cities, towns, and all other local governmental entities.

Section 13. Investment of public funds and public retirement system and state compensation insurance fund assets. (1) The legislature shall provide for a unified investment program for public funds and public retirement system and state compensation insurance fund assets and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. Except as provided in subsections (3) and (4), no public funds shall be invested in private corporate capital stock. The investment program shall be audited at least annually and a report thereof submitted to the governor and legislature.

(2) The public school fund and the permanent funds of the Montana university system and all other state institutions of learning shall be safely and conservatively invested in:

(a) Public securities of the state, its subdivisions, local government units, and districts within the state, or

(b) Bonds of the United States or other securities fully guaranteed as to principal and interest by the United States, or

(c) Such other safe investments bearing a fixed rate of interest as may be provided by law.

(3) Investment of public retirement system assets shall be managed in a fiduciary capacity in the same manner that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in the conduct of an enterprise of a similar character with similar aims. Public retirement system assets may be invested in private corporate capital stock.

(4) Investment of state compensation insurance fund assets shall be managed in a fiduciary capacity in the same manner that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in the conduct of a private insurance organization. State compensation insurance fund assets may be invested in private corporate capital stock. However, the stock investments shall not exceed 25 percent of the book value of the state compensation insurance fund's total invested assets.

Section 14. Prohibited payments. Except for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer in pursuance thereof.

Section 15. Public retirement system assets. (1) Public retirement systems shall be funded on an actuarially sound basis. Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses.

(2) The governing boards of public retirement systems shall administer the system, including actuarial determinations, as fiduciaries of system participants and their beneficiaries.

ARTICLE IX ENVIRONMENT AND NATURAL RESOURCES

Section 1. Protection and improvement. (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

(2) The legislature shall provide for the administration and enforcement of this duty.

(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Section 2. Reclamation. (1) All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.

(2) The legislature shall provide for a fund, to be known as the resource indemnity trust of the state of Montana, to be funded by such taxes on the extraction of natural resources as the legislature may from time to time impose for that purpose.

(3) The principal of the resource indemnity trust shall forever remain inviolate in an amount of one hundred million dollars (\$100,000,000), guaranteed by the state against loss or diversion.

Section 3. Water rights. (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.

Section 4. Cultural resources. The legislature shall provide for the identification, acquisition, restoration, enhancement, preservation, and administration of scenic, historic, archeologic, scientific, cultural, and recreational areas, sites, records and objects, and for their use and enjoyment by the people.

Section 5. Severance tax on coal — trust fund. The legislature shall dedicate not less than one-fourth (1/4) of the coal severance tax to a trust fund, the interest and income from which may be appropriated. The principal of the trust shall forever remain inviolate unless appropriated by vote of three-fourths (3/4) of the members of each house of the legislature. After December 31, 1979, at least fifty percent (50%) of the severance tax shall be dedicated to the trust fund.

Section 6. Noxious weed management trust fund. (1) The legislature shall provide for a fund, to be known as the noxious weed management trust of the state of Montana, to be funded as provided by law.

(2) The principal of the noxious weed management trust fund shall forever remain inviolate in an amount of ten million dollars (\$10,000,000) unless appropriated by vote of three-fourths (3/4) of the members of each house of the legislature.

(3) The interest and income generated from the noxious weed management trust fund may be appropriated by a majority vote of each house of the legislature. Appropriations of the interest and income shall be used only to fund the noxious weed management program, as provided by law.

(4) The principal of the noxious weed management trust fund in excess of ten million dollars (\$10,000,000) may be appropriated by a majority vote of each house of the legislature. Appropriations of the principal in excess of ten million dollars (\$10,000,000) shall be used only to fund the noxious weed management program, as provided by law.

Section 7. Preservation of harvest heritage. The opportunity to harvest wild fish and wild game animals is a heritage that shall forever be preserved to the individual citizens of the state and does not create a right to trespass on private property or diminution of other private rights.

ARTICLE X EDUCATION AND PUBLIC LANDS

Section

1. Educational goals and duties.
2. Public school fund.
3. Public school fund inviolate.
4. Board of land commissioners.
5. Public school fund revenue.
6. Aid prohibited to sectarian schools.

7. Nondiscrimination in education.
8. School district trustees.
9. Boards of education.
10. State university funds.
11. Public land trust, disposition.

Article Cross-References

Superintendent of Public Instruction as Executive Branch officer, Art. VI, sec. 1 through 4, 6, and 7, Mont. Const.
 Education, Title 2, ch. 15, part 15; Title 20.
 State Lands, Title 77.

Section 1. Educational goals and duties. (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

Cross-References

Public school fund, Art. X, sec. 2 and 3, Mont. Const.
 Nondiscrimination in education, Art. X, sec. 7, Mont. Const.; 49-2-307; 49-3-203.
 State university funds, Art. X, sec. 10, Mont. Const.
 State Board of Education, 2-15-1501.
 Board of Regents of Higher Education, 2-15-1505.
 Commissioner of Higher Education, 2-15-1506.
 Board of Public Education, 2-15-1507.
 Property tax exemption of property used for educational purposes, 15-6-201.
 Education, Title 20.
 Vocational and technical education, Title 20, ch. 7, part 3.
 Montana State School for the Deaf and Blind, Title 20, ch. 8.
 State equalization aid, Title 20, ch. 9, part 3.
 Community college districts, Title 20, ch. 15.
 University System, Title 20, ch. 25.
 Charges for tuition — waivers, 20-25-421.
 Libraries, Title 22, ch. 1.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2939, 2940.
 Committee report, Vol. II 718, 721 through 725, 993, 996, 1002, 1003, 1069.
 Cross-references, 1889 and 1972 Constitutions, Vol. II 757.
 Debate — committee report, Trans. 1949 through 1989, 2022, 2151 through 2159.
 Debate — style and drafting report, Trans. 2572, 2573, 2928.
 Delegate proposals, Vol. I 95, 139, 143, 169, 170, 204, 284.
 Final consideration, Trans. 2665 through 2667.
 Text as adopted, Vol. II 1099.

Section 2. Public school fund. The public school fund of the state shall consist of:

(1) Proceeds from the school lands which have been or may hereafter be granted by the United States,

(2) Lands granted in lieu thereof,

(3) Lands given or granted by any person or corporation under any law or grant of the United States,

(4) All other grants of land or money made from the United States for general educational purposes or without special purpose,

(5) All interests in estates that escheat to the state,

(6) All unclaimed shares and dividends of any corporation incorporated in the state,

(7) All other grants, gifts, devises or bequests made to the state for general educational purposes.

Cross-References

Public school fund inviolate, Art. X, sec. 3, Mont. Const.
 Board of Land Commissioners, Art. X, sec. 4, Mont. Const.

Public school fund revenue, Art. X, sec. 5, Mont. Const.
 State university funds, Art. X, sec. 10, Mont. Const.
 Public land trust — disposition, Art. X, sec. 11, Mont. Const.
 Public school fund as separate investment fund, 17-6-203.
 Permissible investments for public school fund, 17-6-211.
 Public school fund, Title 20, ch. 9, part 6.
 Escheated Estates Act, Title 72, ch. 14.
 State Lands, Title 77.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2939, 2940.
 Committee report, Vol. II 583, 596, 718, 725, 726, 993, 996, 997, 1002, 1003, 1069.
 Cross-references, 1889 and 1972 Constitutions, Vol. II 757.
 Debate — committee report, Trans. 1957, 1989, 1990, 1995, 2143.
 Debate — style and drafting report, Trans. 2573, 2574, 2928.
 Final consideration, Trans. 2667, 2668.
 Text as adopted, Vol. II 1099.

Section 3. Public school fund inviolate. The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.; Title 20, ch. 9, part 6.
 Public school fund revenue, Art. X, sec. 5, Mont. Const.
 State university funds, Art. X, sec. 10, Mont. Const.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2939, 2940.
 Committee report, Vol. II 718, 726, 741, 742, 993, 997, 1003, 1004, 1069.
 Cross-references, 1889 and 1972 Constitutions, Vol. II 757.
 Debate — committee report, Trans. 1539 through 1544, 1948, 1990, 2146, 2148, 2245, 2246.
 Debate — style and drafting report, Trans. 2574, 2927, 2928.
 Delegate proposals, Vol. I 169, 176.
 Final consideration, Trans. 2668, 2669.
 Text as adopted, Vol. II 1100.

Section 4. Board of land commissioners. The governor, superintendent of public instruction, auditor, secretary of state, and attorney general constitute the board of land commissioners. It has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law.

Cross-References

Members as Executive Branch officers, Art. VI, sec. 1, Mont. Const.
 Public land trust — disposition, Art. X, sec. 11, Mont. Const.
 Governor as member, 2-15-201.
 Secretary of State as member, 2-15-401.
 Attorney General as member, 2-15-501.
 Approval of Board required for state building leases required under some circumstances, 18-3-105.
 Sale or lease of state land to school district, 20-6-621.
 Deposit of interest and income of public school fund by Board, 20-9-342.
 Community college trustees may accept funds, income, and property from Board, 20-15-225.
 Board of Regents may accept funds, income, and property from Board, 20-25-301.
 Power to accept recreational and camping ground, 23-1-103.
 Montana Natural Areas Act of 1974, Title 76, ch. 12, part 1.
 Board's role in protection of forest resources, Title 76, ch. 13, parts 1 and 2.
 State Lands, Title 77.
 Exchanges of state land, Title 77, ch. 2, part 2.
 Sales of state land, Title 77, ch. 2, part 3.
 Board's role in reclamation, Title 82, ch. 4.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2939, 2940.
 Committee report, Vol. II 718, 719, 726, 727, 994, 997, 1002, 1004, 1069, 1070.
 Cross-references, 1889 and 1972 Constitutions, Vol. II 757.
 Debate — committee report, Trans. 860, 863 through 865, 869, 874, 917, 1280, 1990 through 2002.
 Debate — style and drafting report, Trans. 2574, 2575, 2928.
 Delegate proposal, Vol. I 329.
 Final consideration, Trans. 2669, 2670.
 Text as adopted, Vol. II 1100.

Section 5. Public school fund revenue. (1) Ninety-five percent of all the interest received on the public school fund and ninety-five percent of all rent received from the leasing of

school lands and all other income from the public school fund shall be equitably apportioned annually to public elementary and secondary school districts as provided by law.

(2) The remaining five percent of all interest received on the public school fund, and the remaining five percent of all rent received from the leasing of school lands and all other income from the public school fund shall annually be added to the public school fund and become and forever remain an inseparable and inviolable part thereof.

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.; Title 20, ch. 9, part 6.
Public school fund inviolate, Art. X, sec. 3, Mont. Const.
Deposit of interest and income money, 20-9-341, 20-9-342.
State Lands, Title 77.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2939, 2940.
Committee report, Vol. II 719, 727, 728, 994, 997, 1002, 1004, 1070.
Cross-references, 1889 and 1972 Constitutions, Vol. II 757.
Debate — committee report, Trans. 149, 1948, 1977, 2006 through 2008.
Debate — style and drafting report, Trans. 2575, 2928.
Delegate proposals, Vol. I 146, 169, 170.
Final consideration, Trans. 2670, 2671.
Text as adopted, Vol. II 1100.

Section 6. Aid prohibited to sectarian schools. (1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.

(2) This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

Cross-References

Freedom of religion, Art. II, sec. 5, Mont. Const.
Religious discrimination in public schools prohibited — advocating sectarian tenets in public schools prohibited, Art. X, sec. 7, Mont. Const.
Religious instruction released time program, 20-1-308.
Religious exemption for immunization requirements, 20-5-405.
Accreditation of nonpublic high schools, 20-7-102.
Sectarian publications prohibited — prayer permitted in public schools, 20-7-112.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2939, 2940.
Committee report, Vol. II 629, 716, 719, 728 through 730, 743 through 747, 994, 997, 1002, 1004, 1070.
Cross-references, 1889 and 1972 Constitutions, Vol. II 757.
Debate — committee report, Trans. 1646, 1960, 2008 through 2031, 2235.
Debate — style and drafting report, Trans. 2575, 2576, 2928.
Delegate proposals, Vol. I 137, 189, 222, 276, 311 through 313.
Final consideration, Trans. 2671, 2672.
Text as adopted, Vol. II 1100.

Section 7. Nondiscrimination in education. No religious or partisan test or qualification shall be required of any teacher or student as a condition of admission into any public educational institution. Attendance shall not be required at any religious service. No sectarian tenets shall be advocated in any public educational institution of the state. No person shall be refused admission to any public educational institution on account of sex, race, creed, religion, political beliefs, or national origin.

Cross-References

Equal protection, Art. II, sec. 4, Mont. Const.
Freedom of religion, Art. II, sec. 5, Mont. Const.
Aid to sectarian schools prohibited, Art. X, sec. 6, Mont. Const.
Religious instruction released time program, 20-1-308.
Teachers, superintendents, and principals, Title 20, ch. 4.
Attendance of Indian children, 20-5-108.
Religious exemption for immunization requirements, 20-5-405.
Sectarian publications prohibited — prayer permitted in public schools, 20-7-112.
University System to instruct men and women equally, 20-25-101.
Freedom from discrimination, 49-1-102.

Discrimination in education prohibited, 49-2-307.

Discrimination in educational, counseling, and vocational guidance programs prohibited, 49-3-203.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2939, 2940.

Committee report, Vol. II 719, 730, 731, 994, 997, 998, 1002, 1004, 1070.

Cross-references, 1889 and 1972 Constitutions, Vol. II 757.

Debate — committee report, Trans. 2031 through 2045.

Debate — style and drafting report, Trans. 2576, 2928.

Final consideration, Trans. 2672 through 2674.

Text as adopted, Vol. II 1100.

Section 8. School district trustees. The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

Cross-References

Filing of audit report and financial report, 2-7-514.

Consent of trustees to appointment of District Superintendent as Municipal Superintendent, 7-3-1348.

Management of school money, Title 7, ch. 6, part 28.

Education, Title 20.

School district trustees generally, Title 20, ch. 3, part 3.

Attachment of property under control of trustees, 27-18-406.

Governmental code of fair practices — application to school districts, 49-3-102.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2939, 2940.

Committee report, Vol. II 719, 731, 735, 994, 998, 1002, 1004, 1070.

Cross-references, 1889 and 1972 Constitutions, Vol. II 757.

Debate — committee report, Trans. 1971, 1977, 2046 through 2048, 2050, 2060 through 2062, 2103, 2165.

Debate — style and drafting report, Trans. 2576, 2928.

Delegate proposals, Vol. I 122, 340.

Final consideration, Trans. 2674, 2675.

Text as adopted, Vol. II 1100.

Section 9. Boards of education. (1) There is a state board of education composed of the board of regents of higher education and the board of public education. It is responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governor, who is an ex officio member of each component board.

(2) (a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex officio non-voting members of the board.

(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

(d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.

(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board.

Cross-References

Governor and Superintendent of Public Instruction as executive officers, Art. VI, sec. 1, Mont. Const.

Board of Regents exempt from Montana Administrative Procedure Act, 2-4-102.

Governor as member of State Board of Education, 2-15-201.

Superintendent of Public Instruction, 2-15-701; Title 20, ch. 3, part 1.

State Board of Education, 2-15-1501.

Board of Regents, 2-15-1505.

Commissioner of Higher Education, 2-15-1506.

Board of Public Education, 2-15-1507.

Appointments to Boards, 2-15-1508.

Agencies allocated to State Board of Education, 2-15-1511.
 Application of portions of state employee classification requirements to Board of Regents and Board of Public Education, 2-18-103.
 Approval of gubernatorial appointments, Title 5, ch. 5, part 3.
 The Legislative Audit Act, Title 5, ch. 13.
 Submission of University System budget, 17-7-112.
 Construction of buildings by Board of Regents without legislative approval, 18-2-102.
 University System buildings exempt from certain preconstruction requirements, 18-2-103.
 Education, Title 20.
 State boards and commissions generally, Title 20, ch. 2.
 University System, Title 20, ch. 25.
 Charges for tuition — waivers, 20-25-421.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2939, 2940.
 Committee report, Vol. II 719, 720, 731 through 740, 994, 995, 998, 999, 1002, 1004, 1005, 1070, 1071.
 Cross-references, 1889 and 1972 Constitutions, Vol. II 757.
 Debate — committee report, Trans. 858, 862, 864, 873, 2046, 2049 through 2091, 2096 through 2142, 2159 through 2174, 2894.
 Debate — style and drafting report, Trans. 2576 through 2593, 2928.
 Delegate proposals, Vol. I 196, 197, 230, 256, 282, 283, 287, 324.
 Final consideration, Trans. 2675, 2676.
 Text as adopted, Vol. II 1100.

Section 10. State university funds. The funds of the Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

Cross-References

The Legislative Audit Act, Title 5, ch. 13.
 University funds within treasury, 17-2-102.
 Fiscal year and financial reports of university units, 17-2-110.
 Endowments to University System, Title 17, ch. 3, part 10.
 University funds as separate investment fund, 17-6-203.
 University finance, Title 20, ch. 25, part 4.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2939, 2940.
 Committee report, Vol. II 720, 740, 995, 999, 1002, 1005, 1071.
 Cross-references, 1889 and 1972 Constitutions, Vol. II 757.
 Debate — committee report, Trans. 2056, 2142.
 Debate — style and drafting report, Trans. 2593, 2594, 2928.
 Delegate proposals, Vol. I 170, 196, 197, 283.
 Final consideration, Trans. 2676, 2677.
 Text as adopted, Vol. II 1100, 1101.

Section 11. Public land trust, disposition. (1) All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised.

(2) No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

(3) No land which the state holds by grant from the United States which prescribes the manner of disposal and minimum price shall be disposed of except in the manner and for at least the price prescribed without the consent of the United States.

(4) All public land shall be classified by the board of land commissioners in a manner provided by law. Any public land may be exchanged for other land, public or private, which is equal in value and, as closely as possible, equal in area.

Cross-References

Board of Land Commissioners, Art. X, sec. 4, Mont. Const.

State Lands, Title 77.
Exchanges of state land, Title 77, ch. 2, part 2.
Sales of state land, Title 77, ch. 2, part 3.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2939, 2940.
Committee report, Vol. II 748 through 752, 1000 through 1002, 1006, 1071, 1072.
Cross-references, 1889 and 1972 Constitutions, Vol. II 757.
Debate — committee report, Trans. 2142 through 2150.
Debate — style and drafting report, Trans. 2593, 2594, 2928.
Delegate proposals, Vol. I 266, 267, 329.
Final consideration, Trans. 2677, 2678.
Text as adopted, Vol. II 1101.

ARTICLE XI LOCAL GOVERNMENT

Section 1. Definition. The term “local government units” includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

Section 2. Counties. The counties of the state are those that exist on the date of ratification of this constitution. No county boundary may be changed or county seat transferred until approved by a majority of those voting on the question in each county affected.

Section 3. Forms of government. (1) The legislature shall provide methods for governing local government units and procedures for incorporating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.

(2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator. The terms, qualifications, duties, and compensation of those offices shall be provided by law. The Board of county commissioners may consolidate two or more such offices. The Boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such office in those counties.

Section 4. General powers. (1) A local government unit without self-government powers has the following general powers:

- (a) An incorporated city or town has the powers of a municipal corporation and legislative, administrative, and other powers provided or implied by law.
- (b) A county has legislative, administrative, and other powers provided or implied by law.
- (c) Other local government units have powers provided by law.
- (2) The powers of incorporated cities and towns and counties shall be liberally construed.

Section 5. Self-government charters. (1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body.

(2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:

- (a) Initiated by petition in the local government unit or combination of units; or
- (b) Called by the governing body of the local government unit or combination of units.
- (3) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

Section 6. Self-government powers. A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or

charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

Section 7. Intergovernmental cooperation. (1) Unless prohibited by law or charter, a local government unit may

- (a) cooperate in the exercise of any function, power, or responsibility with,
- (b) share the services of any officer or facilities with,
- (c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state, or the United States.

(2) The qualified electors of a local government unit may, by initiative or referendum, require it to do so.

Section 8. Initiative and referendum. The legislature shall extend the initiative and referendum powers reserved to the people by the constitution to the qualified electors of each local government unit.

Section 9. Voter review of local government. (1) The legislature shall, within four years of the ratification of this constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.

(2) The legislature shall require an election in each local government to determine whether a local government will undertake a review procedure once every ten years after the first election. Approval by a majority of those voting in the decennial general election on the question of undertaking a local government review is necessary to mandate the election of a local government study commission. Study commission members shall be elected during any regularly scheduled election in local governments mandating their election.

ARTICLE XII DEPARTMENTS AND INSTITUTIONS

Section 1. Agriculture. (1) The legislature shall provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance, and develop all agriculture.

(2) Special levies may be made on livestock and on agricultural commodities for disease control and indemnification, predator control, and livestock and commodity inspection, protection, research, and promotion. Revenue derived shall be used solely for the purposes of the levies.

Section 2. Labor. (1) The legislature shall provide for a Department of Labor and Industry, headed by a Commissioner appointed by the governor and confirmed by the senate.

(2) A maximum period of 8 hours is a regular day's work in all industries and employment except agriculture and stock raising. The legislature may change this maximum period to promote the general welfare.

Section 3. Institutions and assistance. (1) The state shall establish and support institutions and facilities as the public good may require, including homes which may be necessary and desirable for the care of veterans.

(2) Persons committed to any such institutions shall retain all rights except those necessarily suspended as a condition of commitment. Suspended rights are restored upon termination of the state's responsibility.

(3) The legislature may provide such economic assistance and social and rehabilitative services for those who, by reason of age, infirmities, or misfortune are determined by the legislature to be in need.

(4) The legislature may set eligibility criteria for programs and services, as well as for the duration and level of benefits and services.

Section 4. Montana tobacco settlement trust fund. (1) The legislature shall dedicate not less than two-fifths of any tobacco settlement proceeds received on or after January

1, 2001, to a trust fund, nine-tenths of the interest and income of which may be appropriated. One-tenth of the interest and income derived from the trust fund on or after January 1, 2001, shall be deposited in the trust fund. The principal of the trust fund and one-tenth of the interest and income deposited in the trust fund shall remain forever inviolate unless appropriated by a vote of two-thirds of the members of each house of the legislature.

(2) Appropriations of the interest, income, or principal from the trust fund shall be used only for tobacco disease prevention programs and state programs providing benefits, services, or coverage that are related to the health care needs of the people of Montana and may not be used for other purposes.

(3) Appropriations of the interest, income, or principal from the trust fund shall not be used to replace state or federal money used to fund tobacco disease prevention programs and state programs that existed on December 31, 1999, providing benefits, services, or coverage of the health care needs of the people of Montana.

ARTICLE XIII GENERAL PROVISIONS

Section 1. Nonmunicipal corporations. (1) Corporate charters shall be granted, modified, or dissolved only pursuant to general law.

(2) The legislature shall provide protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations.

(3) The legislature shall pass no law retrospective in its operations which imposes on the people a new liability in respect to transactions or considerations already passed.

Section 2. Consumer counsel. The legislature shall provide for an office of consumer counsel which shall have the duty of representing consumer interests in hearings before the public service commission or any other successor agency. The legislature shall provide for the funding of the office of consumer counsel by a special tax on the net income or gross revenues of regulated companies.

Section 3. Repealed. Sec. 1, Const. Amend. No. 16, approved Nov. 4, 1986.

Section 4. Code of ethics. The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees.

Section 5. Exemption laws. The legislature shall enact liberal homestead and exemption laws.

Section 6. Perpetuities. No perpetuities shall be allowed except for charitable purposes.

Section 7. Marriage. Only a marriage between one man and one woman shall be valid or recognized as a marriage in this state.

ARTICLE XIV CONSTITUTIONAL REVISION

Section 1. Constitutional convention. The legislature, by an affirmative vote of two-thirds of all the members, whether one or more bodies, may at any time submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter, or amend this constitution.

Section 2. Initiative for constitutional convention. (1) The people may by initiative petition direct the secretary of state to submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter, or amend this constitution. The petition shall be signed by at least ten percent of the qualified electors of the state. That number

shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The secretary of state shall certify the filing of the petition in his office and cause the question to be submitted at the next general election.

Section 3. Periodic submission. If the question of holding a convention is not otherwise submitted during any period of 20 years, it shall be submitted as provided by law at the general election in the twentieth year following the last submission.

Section 4. Call of convention. If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session. The number of delegates to the convention shall be the same as that of the larger body of the legislature. The qualifications of delegates shall be the same as the highest qualifications required for election to the legislature. The legislature shall determine whether the delegates may be nominated on a partisan or a non-partisan basis. They shall be elected at the same places and in the same districts as are the members of the legislative body determining the number of delegates.

Section 5. Convention expenses. The legislature shall, in the act calling the convention, designate the day, hour, and place of its meeting, and fix and provide for the pay of its members and officers and the necessary expenses of the convention.

Section 6. Oath, vacancies. Before proceeding, the delegates shall take the oath provided in this constitution. Vacancies occurring shall be filled in the manner provided for filling vacancies in the legislature if not otherwise provided by law.

Section 7. Convention duties. The convention shall meet after the election of the delegates and prepare such revisions, alterations, or amendments to the constitution as may be deemed necessary. They shall be submitted to the qualified electors for ratification or rejection as a whole or in separate articles or amendments as determined by the convention at an election appointed by the convention for that purpose not less than two months after adjournment. Unless so submitted and approved by a majority of the electors voting thereon, no such revision, alteration, or amendment shall take effect.

Section 8. Amendment by legislative referendum. Amendments to this constitution may be proposed by any member of the legislature. If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall be submitted to the qualified electors at the next general election. If approved by a majority of the electors voting thereon, the amendment shall become a part of this constitution on the first day of July after certification of the election returns unless the amendment provides otherwise.

Section 9. Amendment by initiative. (1) The people may also propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of at least one-half of the counties.

(2) The petitions shall be filed with the secretary of state. If the petitions are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the constitution effective the first day of July following its approval, unless the amendment provides otherwise.

Section 10. Petition signers. The number of qualified electors required for the filing of any petition provided for in this Article shall be determined by the number of votes cast for the office of governor in the preceding general election.

Section 11. Submission. If more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted upon separately.

Done in open convention at the city of Helena, in the state of Montana, this twenty-second day of March, in the year of our Lord one thousand nine hundred and seventy-two.

Leo Graybill, Jr., President
 Jean M. Bowman, Secretary
 Magnus Aasheim
 John H. Anderson, Jr.
 Oscar L. Anderson
 Harold Arbanas
 Franklin Arness
 Cedor B. Aronow
 William H. Artz
 Thomas M. Ask
 Betty Babcock
 Lloyd Barnard
 Grace C. Bates
 Don E. Belcher
 Ben E. Berg, Jr.
 E. M. Berthelson
 Chet Blaylock
 Virginia H. Blend
 Geoffrey L. Brazier
 Bruce M. Brown
 Daphne Bugbee
 William A. Burkhardt
 Marjorie Cain
 Bob Campbell
 Jerome J. Cate
 Richard J. Champoux
 Lyman W. Choate
 Max Conover
 C. Louise Cross
 Wade J. Dahood
 Carl M. Davis
 Douglas Delaney
 Maurice Driscoll
 Dave Drum
 Dorothy Eck
 Marian S. Erdmann
 Leslie Eskildsen
 Mark Etchart
 James R. Felt
 Donald R. Foster
 Noel D. Furlong
 J. C. Garlington
 E. S. Gysler
 Otto T. Habedank
 Rod Hanson
 R. S. Hanson
 Gene Harbaugh
 Paul K. Harlow
 George Harper
 Daniel W. Harrington

George B. Heliker
 David L. Holland
 Arnold W. Jacobsen
 George H. James
 Torrey B. Johnson
 Thomas F. Joyce
 A. W. Kamhoot
 Robert Lee Kelleher
 John H. Leuthold
 Jerome T. Loendorf
 Peter "Pete" Lorello
 Joseph H. McCarvel
 Russell C. McDonough
 Mike McKeon
 Charles B. McNeil
 Charles H. Mahoney
 Rachell K. Mansfield
 Fred J. Martin
 J. Mason Melvin
 Lyle R. Monroe
 Marshall Murray
 Robert B. Noble
 Richard A. Nutting
 Mrs. Thomas Payne
 Catherine Pemberton
 Donald Rebal
 Arlyne E. Reichert
 Mrs. Mae Nan Robinson
 Richard B. Roeder
 George W. Rollins
 Miles Romney
 Sterling Rygg
 Don Scanlin
 John M. Schiltz
 Henry Siderius
 Clark E. Simon
 Carman M. Skari
 M. Lynn Sparks
 Lucile Speer
 R. J. Studer, Sr.
 Mrs. John Justin (Veronica) Sullivan
 William H. Swanberg
 John H. Toole
 Mrs. Edith M. Van Buskirk
 Robert Vermillion
 Roger A. Wagner
 Jack K. Ward
 Margaret S. Warden
 Archie O. Wilson
 Robert F. Woodmansey

TRANSITION SCHEDULE

Transition Schedule. The following provisions shall remain part of this Constitution until their terms have been executed. Once each year the attorney general shall review the following provisions and certify to the secretary of state which, if any, have been executed. Any provisions so certified shall thereafter be removed from this Schedule and no longer published as part of this Constitution.

Section 1. Accelerated effective date. Executed (certified by letter, December 4, 1974).

Section 2. Delayed effective date. Executed (certified by letter, December 4, 1974).

Section 3. Prospective operation of declaration of rights. Any rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive.

Section 4. Terms of judiciary. Executed (certified by letter, December 20, 1978).

Section 5. Terms of legislators. Executed (certified by letter, February 22, 1977).

Section 6. General transition. (1) The rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations, and rules of court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution.

(2) The validity of all public and private bonds, debts, and contracts, and of all suits, actions, and rights of action, shall continue as if no change had taken place.

(3) Executed (certified by letter, February 22, 1977).

TITLE 1

GENERAL LAWS AND DEFINITIONS

CHAPTER 1

GENERAL PROVISIONS

Part 1

Meaning of Law

1-1-101. Definition of law. “Law” is a solemn expression of the will of the supreme power of the state.

History: En. Sec. 5150, Pol. C. 1895; re-en. Sec. 3550, Rev. C. 1907; re-en. Sec. 5670, R.C.M. 1921; Cal. Pol. C. Sec. 4466; re-en. Sec. 5670, R.C.M. 1935; R.C.M. 1947, 12-101.

1-1-102. How expressed. The will of the supreme power is expressed by:

- (1) the constitution;
- (2) statutes.

History: En. Sec. 5151, Pol. C. 1895; re-en. Sec. 3551, Rev. C. 1907; re-en. Sec. 5671, R.C.M. 1921; Cal. Pol. C. Sec. 4467; re-en. Sec. 5671, R.C.M. 1935; R.C.M. 1947, 12-102.

1-1-103. Laws — written or unwritten. Laws, whether organic or ordinary, are either written or unwritten.

History: En. Sec. 3183, C. Civ. Proc. 1895; re-en. Sec. 7901, Rev. C. 1907; re-en. Sec. 10545, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1895; re-en. Sec. 10545, R.C.M. 1935; R.C.M. 1947, 93-1001-7.

1-1-104. Written law defined. A written law is that which is promulgated in writing and of which a record is in existence.

History: En. Sec. 3184, C. Civ. Proc. 1895; re-en. Sec. 7902, Rev. C. 1907; re-en. Sec. 10546, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1896; re-en. Sec. 10546, R.C.M. 1935; R.C.M. 1947, 93-1001-8.

1-1-105. Constitution and statutes. The organic law is the constitution of government and is altogether written. Other written laws are denominated statutes. The written law of this state is therefore contained in its constitution and statutes and in the constitution and statutes of the United States.

History: En. Sec. 3185, C. Civ. Proc. 1895; re-en. Sec. 7903, Rev. C. 1907; re-en. Sec. 10547, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1897; re-en. Sec. 10547, R.C.M. 1935; R.C.M. 1947, 93-1001-9.

1-1-106. Public and private statutes. Statutes are public or private. A private statute is one which concerns only certain designated individuals and affects only their private rights. All other statutes are public, in which are included statutes creating or affecting corporations.

History: En. Sec. 3186, C. Civ. Proc. 1895; re-en. Sec. 7904, Rev. C. 1907; re-en. Sec. 10548, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1898; re-en. Sec. 10548, R.C.M. 1935; R.C.M. 1947, 93-1001-10.

1-1-107. Unwritten law defined. Unwritten law is the law that is not promulgated and recorded, as mentioned in 1-1-104, but that is, nevertheless, observed and administered in the courts of the country. It has no certain repository but is collected from the reports of the decisions of the courts and treatises of learned people.

History: En. Sec. 3187, C. Civ. Proc. 1895; re-en. Sec. 7905, Rev. C. 1907; re-en. Sec. 10549, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1899; re-en. Sec. 10549, R.C.M. 1935; R.C.M. 1947, 93-1001-11; amd. Sec. 1, Ch. 61, L. 2007.

Compiler’s Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

1-1-108. Common law — applicability of. In this state there is no common law in any case where the law is declared by statute. But where not so declared, if the same is applicable and of a general nature and not in conflict with the statutes, the common law shall be the law and rule of decision.

History: En. Sec. 3452, C. Civ. Proc. 1895; re-en. Sec. 8060, Rev. C. 1907; re-en. Sec. 10703, R.C.M. 1921; re-en. Sec. 10703, R.C.M. 1935; R.C.M. 1947, 12-104.

1-1-109. Common law of England — when rule of decision. The common law of England, so far as it is not repugnant to or inconsistent with the constitution of the United States or the constitution or laws of this state, is the rule of decision in all the courts of this state.

History: En. p. 356, Bannack Stat.; re-en. p. 388, Cod. Stat. 1871; re-en. Sec. 144, 5th Div. Rev. Stat. 1879; re-en. Sec. 201, 5th Div. Comp. Stat. 1887; amd. Sec. 5152, Pol. C. 1895; re-en. Sec. 3552, Rev. C. 1907; re-en. Sec. 5672, R.C.M. 1921; Cal. Pol. C. Sec. 4468; re-en. Sec. 5672, R.C.M. 1935; R.C.M. 1947, 12-103.

Part 2

General Definitions of Terms Used in Code

1-1-201. Terms of wide applicability. (1) Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

- (a) “Oath” includes an affirmation or declaration.
- (b) “Person” includes a corporation or other entity as well as a natural person.
- (c) “Several” means two or more.
- (d) “State”, when applied to the different parts of the United States, includes the District of Columbia and the territories.
- (e) “United States” includes the District of Columbia and the territories.

(2) Wherever the word “man” or “men” or a word that includes the syllable “man” or “men” in combination with other syllables, such as “workman”, appears in this code, the word or syllable includes “woman” or “women” unless the context clearly indicates a contrary intent and unless the subject matter of the statute relates clearly and necessarily to a specific sex only.

(3) Whenever the term “heretofore” occurs in any statute, it must be construed to mean any time previous to the day the statute takes effect. Whenever the word “hereafter” occurs, it must be construed to mean the time after the statute containing the term takes effect.

History: (1)En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; Sec. 19-103, R.C.M. 1947; (2)En. 12-216 by Sec. 61, Ch. 535, L. 1975; Sec. 12-217, R.C.M. 1947; (3)En. Sec. 4670, Civ. C. 1895; re-en. Sec. 6232, Rev. C. 1907; re-en. Sec. 8782, R.C.M. 1921; re-en. Sec. 8782, R.C.M. 1935; Sec. 19-104, R.C.M. 1947; R.C.M. 1947, 12-217, 19-103(part), (6), (7), (14), (27), (29), 19-104; amd. Sec. 2, Ch. 61, L. 2007.

Compiler’s Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

1-1-202. Terms relating to procedure and the judiciary. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) “Deposition” means a written declaration under oath or affirmation, made upon notice to the adverse party for the purpose of enabling the adverse party to attend and cross-examine.

(2) “Judicial officers” means justices of the supreme court, judges of the district courts, justices of the peace, municipal judges, and city judges.

(3) “Judicial record” means the record of official entry of the proceedings in a court of justice or of the official act of a judicial officer in an action or special proceeding.

(4) “Oral examination” means an examination in the presence of the jury or tribunal that is to decide the fact or act upon it or the spoken testimony of the witness being heard by the jury or tribunal.

(5) “Process” means a writ or summons issued in the course of judicial proceedings.

(6) “Registered mail”, for purposes of legal notification, means registered or certified mail.

(7) “Testify” means every mode of oral statement under oath or affirmation.

(8) “Writ” means an order in writing issued in the name of the state or of a court or judicial officer.

History: Ap. p. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; Sec. 19-103, R.C.M. 1947; (1)En. Sec. 3322, C. Civ. Proc. 1895; re-en. Sec. 7989, Rev. C. 1907; re-en. Sec. 10633, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2004; re-en. Sec. 10633, R.C.M. 1935; Sec. 93-1601-3, R.C.M. 1947; (3)En. Sec. 3192, C. Civ. Proc. 1895; re-en. Sec. 7910, Rev. C. 1907; re-en. Sec. 10554, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1904; re-en. Sec. 10554, R.C.M. 1935; Sec. 93-1001-16, R.C.M. 1947; (5)En. Sec. 3323, C. Civ. Proc. 1895; re-en. Sec. 7990, Rev. C. 1907; re-en. Sec. 10634, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2005; Sec. 10634, R.C.M. 1935; Sec. 93-1601-4, R.C.M. 1947; (7)En. Sec. 1, Ch. 5, L. 1967; Sec. 19-122, R.C.M. 1947; R.C.M. 1947, 19-103(part), (9), (10), (13), (30), (31), (33), 19-122, 93-1001-16, 93-1601-3, 93-1601-4; amd. Sec. 248, Ch. 800, L. 1991; amd. Sec. 3, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

1-1-203. Terms relating to instruments and other writings. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) "Execution" of an instrument means subscribing and delivering it, with or without affixing a seal.

(2) "Folio", when used as a measure for computing fees, means 100 words, counting every two letters or numbers necessarily used as a word. Any portion of a folio, when in the whole paper there is not a complete folio and when there is an excess over the last folio exceeding one-half, may be computed as a folio.

(3) "Printing" means the act of reproducing a design on a surface by any process.

(4) "Signature" or "subscription" includes the mark of a person who cannot write if the person's name is written near the mark by another person who also signs that person's own name as a witness.

(5) "Subscribing witness" means a person who sees a writing executed or hears it acknowledged and at the request of the party signs the person's name as a witness.

(6) "Writing" includes printing.

History: Ap. p. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; Sec. 19-103, R.C.M. 1947; (1)En. Sec. 3224, C. Civ. Proc. 1895; re-en. Sec. 7937, Rev. C. 1907; re-en. Sec. 10581, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1933; re-en. Sec. 10581, R.C.M. 1935; Sec. 93-1101-5, R.C.M. 1947; (2)En. Sec. 4618, Pol. C. 1895; re-en. Sec. 3151, Rev. C. 1907; re-en. Sec. 4899, R.C.M. 1921; re-en. Sec. 4899, R.C.M. 1935; Sec. 25-215, R.C.M. 1947; (3)En. Sec. 1, Ch. 267, L. 1969; amd. Sec. 11, Ch. 100, L. 1973; Sec. 19-103.1, R.C.M. 1947; (5)En. Sec. 3226, C. Civ. Proc. 1895; re-en. Sec. 7939, Rev. C. 1907; re-en. Sec. 10583, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1935; re-en. Sec. 10583, R.C.M. 1935; Sec. 93-1101-7, R.C.M. 1947; R.C.M. 1947, 19-103(part), (28), (32), 19-103.1, 25-215, 93-1101-5, 93-1101-7; amd. Sec. 4, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

1-1-204. Terms denoting state of mind. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) "Corruptly" means a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to or to some other person.

(2) "Knowingly" means only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of the act or omission.

(3) "Malice" and "maliciously" mean a wish to vex, annoy, or injure another person or an intent to do a wrongful act, established either by proof or presumption of law.

(4) "Neglect", "negligence", "negligent", and "negligently" mean a want of the attention to the nature or probable consequences of the act or omission that a prudent person would ordinarily give in acting in the person's own concerns.

(5) "Willfully", when applied to the intent with which an act is done or omitted, means a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate the law, to injure another, or to acquire any advantage.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part), (19) thru (23); amd. Sec. 5, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

1-1-205. Terms relating to property and decedents' estates. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) "Personal property" means money, goods, chattels, things in action, and evidences of debt.

(2) "Pledge", "mortgage", "conditional sale", "lien", "assignment", and like terms, when used in referring to a security interest in personal property, include a corresponding type of security interest under the Uniform Commercial Code—Secured Transactions.

(3) "Property" means real and personal property.

(4) “Real property” means lands, tenements, hereditaments, and possessory title to public lands.

(5) “Will” includes codicils.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part), (1), (2), (3), (8), (26).

1-1-206. Terms relating to obligations and transactions. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) “Customary” means according to usage.

(2) “Third persons” means all persons who are not parties to the obligation or transaction concerning which the phrase is used.

(3) “Usage” means a reasonable and lawful public custom concerning transactions of the same nature as those which are to be affected thereby, existing at the place where the obligation is to be performed, and either known to the parties or so well established, general, and uniform that the parties must be presumed to have acted with reference thereto.

(4) “Usual” means according to usage.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part), (15) thru (18).

1-1-207. Miscellaneous terms. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) “Bribe” means anything of value or advantage, present or prospective, or any promise or undertaking to give anything of value or advantage, that is asked, given, or accepted with a corrupt intent to unlawfully influence the person to whom it is given in the person’s action, vote, or opinion in any public or official capacity.

(2) “Peace officer” has the meaning as defined in 46-1-202.

(3) “Vessel”, when used in reference to shipping, includes ships of all kinds, steamboats and steamships, canal boats, and every structure adapted to be navigated from place to place.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part), (11), (12), (24); amd. Sec. 249, Ch. 800, L. 1991; amd. Sec. 1, Ch. 189, L. 1997; amd. Sec. 1, Ch. 491, L. 1999.

1-1-208. Terms relating to legislature. (1) Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(a) “Majority leader” means the leader of the majority party, elected by the caucus as provided in 5-2-221.

(b) “Majority party” means the party with the most members in a house of the legislature, subject to subsection (2).

(c) “Minority leader” means the leader of the minority party, elected by the caucus as provided in 5-2-221.

(d) “Minority party” means the party with the second most members in a house of the legislature, subject to subsection (2).

(2) If there are an equal number of members of each party in a house of the legislature, then the majority party is the party of the president of the senate or the speaker of the house and the minority party is the other party with an equal number of members.

History: En. Sec. 1, Ch. 4, Sp. L. May 2007.

Compiler’s Comments

Effective Date: Section 21, Ch. 4, Sp. L. May 2007, provided that this section is effective on passage and approval. Approved May 25, 2007.

Retroactive Applicability: Section 22, Ch. 4, Sp. L. May 2007, provided: “[This act] applies retroactively, within the meaning of 1-2-109, to appointments made for members of the 60th legislature.”

1-1-209 through 1-1-213 reserved.

1-1-214. Repealed. Sec. 2, Ch. 17, L. 1991.

History: En. Sec. 2, Ch. 431, L. 1987.

1-1-215. Residence — rules for determining. Every person has, in law, a residence. In determining the place of residence, the following rules are to be observed:

(1) It is the place where a person remains when not called elsewhere for labor or other special or temporary purpose and to which the person returns in seasons of repose.

(2) There may be only one residence. If a person claims a residence within Montana for any purpose, then that location is the person's residence for all purposes unless there is a specific statutory exception.

(3) A residence cannot be lost until another is gained.

(4) The residence of an unmarried minor is:

(a) the residence of the minor's parents;

(b) if one of the parents is deceased or the parents do not share the same residence, the residence of the parent having legal custody;

(c) if neither parent has legal custody, the residence of the parent with whom the minor customarily resides; or

(d) if the conditions in 20-5-502 are met, the last-known residence of the parent with whom the minor normally resided immediately prior to residing with the caretaker relative.

(5) In the case of a controversy, the district court may declare which parental residence is the residence of an unmarried minor.

(6) Except as provided in Title 20, chapter 5, part 5, the residence of an unmarried minor who has a parent living cannot be changed by either the minor's own act or that of the minor's guardian.

(7) The residence can be changed only by the union of act and intent.

History: En. Sec. 72, Pol. C. 1895; re-en. Sec. 32, Rev. C. 1907; re-en. Sec. 33, R.C.M. 1921; Cal. Pol. C. Sec. 52; re-en. Sec. 33, R.C.M. 1935; amd. Sec. 4, Ch. 164, L. 1975; R.C.M. 1947, 83-303; amd. Sec. 1, Ch. 367, L. 1997; amd. Sec. 4, Ch. 442, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 442 inserted (4)(d) providing that the residence of an unmarried minor is the last-known residence of the parent with whom the minor normally resided immediately prior to residing with the caretaker relative if the conditions in 20-5-502 are met; in (6) at beginning inserted exception clause; and made minor changes in style. Amendment effective July 1, 2007.

Applicability: Section 11, Ch. 442, L. 2007, provided: "[This act] applies to a caretaker relative to whom a minor is given by a parent on or after July 1, 2007, for care by the relative."

1-1-216. Legal holidays and business days. (1) The following are legal holidays in the state of Montana:

(a) Each Sunday;

(b) New Year's Day, January 1;

(c) Martin Luther King Jr. Day, the third Monday in January;

(d) Lincoln's and Washington's Birthdays, the third Monday in February;

(e) Memorial Day, the last Monday in May;

(f) Independence Day, July 4;

(g) Labor Day, the first Monday in September;

(h) Columbus Day, the second Monday in October;

(i) Veterans' Day, November 11;

(j) Thanksgiving Day, the fourth Thursday in November;

(k) Christmas Day, December 25;

(l) State general election day.

(2) If any of the above-enumerated holidays (except Sunday) fall upon a Sunday, the Monday following is a holiday. All other days are business days.

History: En. Sec. 10, Pol. C. 1895; re-en. Sec. 10, Rev. C. 1907; amd. Sec. 1, Ch. 21, L. 1921; re-en. Sec. 10, R.C.M. 1921; Cal. Pol. C. Secs. 10-11; re-en. Sec. 10, R.C.M. 1935; amd. Sec. 1, Ch. 209, L. 1955; amd. Sec. 1, Ch. 6, L. 1965; amd. Sec. 1, Ch. 89, L. 1969; amd. Sec. 6, Ch. 32, L. 1971; amd. Sec. 1, Ch. 16, L. 1974; R.C.M. 1947, 19-107(part); amd. Sec. 1, Ch. 431, L. 1987; amd. Sec. 1, Ch. 17, L. 1991.

1-1-217. Notice — actual and constructive. (1) Notice is:

(a) actual whenever it consists of express information of a fact;

(b) constructive whenever it is imputed by law.

(2) Each person who has actual notice of circumstances sufficient to put a prudent person upon inquiry as to a particular fact has constructive notice of the fact itself in all cases in which, by prosecuting the inquiry, the person might have learned the facts.

History: (1) En. Sec. 4666, Civ. C. 1895; re-en. Sec. 6228, Rev. C. 1907; re-en. Sec. 8780, R.C.M. 1921; Cal. Civ. C. Sec. 18; Based on Field Civ. C. Secs. 2009, 2010; re-en. Sec. 8780, R.C.M. 1935; amd. Sec. 4, Ch. 309, L.

1977; Sec. 19-105, R.C.M. 1947; (2) En. Sec. 4667, Civ. C. 1895; re-en. Sec. 6229, Rev. C. 1907; re-en. Sec. 8781, R.C.M. 1921; Cal. Civ. C. Sec. 19; Based on Field Civ. C. Sec. 2011; re-en. Sec. 8781, R.C.M. 1935; R.C.M. 1947, 19-106; R.C.M. 1947, 19-105, 19-106; amd. Sec. 6, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

1-1-218. Words giving joint authority. Words giving a joint authority to three or more public officers or other persons are construed as giving such authority to a majority of them unless it is otherwise expressed in the act giving the authority.

History: En. Sec. 14, Pol. C. 1895; re-en. Sec. 14, Rev. C. 1907; re-en. Sec. 14, R.C.M. 1921; Cal. Pol. C. Sec. 15; re-en. Sec. 14, R.C.M. 1935; R.C.M. 1947, 19-101.

1-1-219. Relationship by affinity. (1) Unless the context requires otherwise, in this code "affinity" means the relation that one spouse has, by virtue of the marriage, to blood relatives of the other. Therefore, a person has the same relation by affinity to that person's spouse's blood relatives as that person's spouse has to them by consanguinity and vice versa.

(2) Degrees of relationship by affinity are computed in the same manner as degrees of relationship by consanguinity.

(3) Notwithstanding subsection (1), the term "affinity" includes the relation of husband and wife. Husband and wife are considered to be related by affinity in the first degree.

History: En. Sec. 1, Ch. 119, L. 1979; amd. Sec. 7, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

1-1-220 through 1-1-223 reserved.

1-1-224. Observance of right to keep and bear arms. The week beginning the first Monday in March is an official week of observance to commemorate Montana's valued heritage of the right of each person to keep and bear arms in the defense of the person's home, person, or property or in aid of civil power. During this week, all Montanans are urged to reflect on their right to keep and bear arms and to celebrate this right in lawful ways.

History: En. Sec. 1, Ch. 421, L. 1991; amd. Sec. 8, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

1-1-225. Arbor Day as official day of observance. (1) To increase public awareness of the vital importance of conserving and propagating trees and forests to the everyday life of Montana citizens, the last Friday in April is designated Arbor Day and an official day of observance. On this day, there may be special observances and exercises throughout the state to celebrate and emphasize the importance of cultivating forest, fruit, and ornamental trees.

(2) The governor shall encourage the observances and exercises described in this section and, by proclamation, call the public's attention to the importance of the state's forest resources.

History: En. Sec. 1, Ch. 16, L. 1989.

1-1-226. Official observance of Montana's hunting heritage. The week beginning the third Monday in September is an official week of observance in Montana to commemorate this state's valued heritage of hunting game animals. During this week, all Montanans are urged to:

(1) reflect on hunting as an expression of our culture and heritage;

(2) acknowledge that it is our community of hunters who have made the greatest contributions to the establishment of current game animal populations; and

(3) celebrate this culture and heritage in all lawful ways.

History: En. Sec. 1, Ch. 455, L. 1991; amd. Sec. 9, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

1-1-227. Bill of rights day. There is established a bill of rights day for the state of Montana. The bill of rights day is December 15 of each year to commemorate the day in 1791 in which three-fourths of the states ratified the bill of rights as part of the U.S. constitution.

History: En. Sec. 1, Ch. 477, L. 2007.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

Part 3 Rules Concerning Time

1-1-301. Definitions. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

- (1) A “day” is the period of time between any midnight and the midnight following.
- (2) “Daytime” is the period of time between sunrise and sunset, and “nighttime” is the period of time between sunset and sunrise.
- (3) “Month” means a calendar month.
- (4) A “week” consists of 7 consecutive days.
- (5) “Year” means a calendar year.

History: Ap. p. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; Sec. 19-103, R.C.M. 1947; (3)En. Sec. 3143, Pol. C. 1895; re-en. Sec. 2030, Rev. C. 1907; re-en. Sec. 4280, R.C.M. 1921; Cal. Pol. C. Sec. 3258; re-en. Sec. 4280, R.C.M. 1935; Sec. 90-404, R.C.M. 1947; (4)En. Sec. 3144, Pol. C. 1895; re-en. Sec. 2031, Rev. C. 1907; re-en. Sec. 4281, R.C.M. 1921; Cal. Pol. C. Sec. 3259; re-en. Sec. 4281, R.C.M. 1935; Sec. 90-405, R.C.M. 1947; (5)En. Sec. 3145, Pol. C. 1895; re-en. Sec. 2032, Rev. C. 1907; re-en. Sec. 4282, R.C.M. 1921; Cal. Pol. C. Sec. 3260; re-en. Sec. 4282, R.C.M. 1935; Sec. 90-406, R.C.M. 1947; R.C.M. 1947, 19-103(part), (4), (5), 90-404, 90-405, 90-406.

1-1-302. Computation of time — what calendar used. Time is computed according to the Gregorian or new style, and January 1 in every year passed since 1752 or to come must be reckoned as the first day of the year.

History: En. Sec. 3140, Pol. C. 1895; re-en. Sec. 2027, Rev. C. 1907; re-en. Sec. 4277, R.C.M. 1921; Cal. Pol. C. Sec. 3255; re-en. Sec. 4277, R.C.M. 1935; R.C.M. 1947, 90-401.

1-1-303. Leap year. Except the year 1900, every fourth year which, by usage in this state, is considered a leap year is a leap year consisting of 366 days.

History: En. Sec. 3141, Pol. C. 1895; re-en. Sec. 2028, Rev. C. 1907; re-en. Sec. 4278, R.C.M. 1921; Cal. Pol. C. Sec. 3256; re-en. Sec. 4278, R.C.M. 1935; R.C.M. 1947, 90-402.

1-1-304. Computation of fractions of a year. Fractions of a year are computed by the number of months; thus, half a year is 6 months.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part).

1-1-305. Computation of time — when fractions of a day disregarded. Fractions of a day are disregarded in computations which include more than 1 day and involve no questions of priority.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part).

1-1-306. Computation of time — which days counted. The time in which any act provided by law is to be done is computed by excluding the first day and including the last unless the last day is a holiday, and then it is also excluded.

History: En. Sec. 430, p. 130, Bannack Stat.; amd. Sec. 501, p. 233, L. 1867; re-en. Sec. 578, p. 153, Cod. Stat. 1871; re-en. Sec. 519, p. 176, L. 1877; re-en. Sec. 519, 1st Div. Rev. Stat. 1879; re-en. Sec. 536, 1st Div. Comp. Stat. 1887; amd. Sec. 3459, C. Civ. Proc. 1895; re-en. Sec. 8067, Rev. C. 1907; re-en. Sec. 10707, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 12; re-en. Sec. 10707, R.C.M. 1935; R.C.M. 1947, 90-407.

1-1-307. Postponement of day appointed for an action when it falls on a holiday or Saturday. Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday or a Saturday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

History: En. Sec. 12, Pol. C. 1895; re-en. Sec. 12, Rev. C. 1907; re-en. Sec. 12, R.C.M. 1921; Cal. Pol. C. Sec. 13; re-en. Sec. 12, R.C.M. 1935; R.C.M. 1947, 19-109; amd. Sec. 2, Ch. 69, L. 1987.

Part 4 Citizenship

1-1-401. People defined. The people, as a political body, consist of:

- (1) electors;

(2) citizens not electors.

History: En. Sec. 70, Pol. C. 1895; re-en. Sec. 30, Rev. C. 1907; re-en. Sec. 31, R.C.M. 1921; Cal. Pol. C. Sec. 50; re-en. Sec. 31, R.C.M. 1935; R.C.M. 1947, 83-301.

1-1-402. Citizens defined. The citizens of the state are:

(1) all persons born in this state and residing within it, except the children of transient aliens;

(2) all persons born out of this state who are citizens of the United States and residing within this state.

History: En. Sec. 71, Pol. C. 1895; re-en. Sec. 31, Rev. C. 1907; re-en. Sec. 32, R.C.M. 1921; Cal. Pol. C. Sec. 51; re-en. Sec. 32, R.C.M. 1935; R.C.M. 1947, 83-302.

1-1-403. Allegiance. Allegiance is the obligation of fidelity and obedience which every citizen owes to the state.

History: En. Sec. 81, Pol. C. 1895; re-en. Sec. 34, Rev. C. 1907; re-en. Sec. 35, R.C.M. 1921; Cal. Pol. C. Sec. 55; re-en. Sec. 35, R.C.M. 1935; R.C.M. 1947, 83-402.

1-1-404. Allegiance — how renounced. Allegiance may be renounced by a change of residence.

History: En. Sec. 82, Pol. C. 1895; re-en. Sec. 35, Rev. C. 1907; re-en. Sec. 36, R.C.M. 1921; Cal. Pol. C. Sec. 56; re-en. Sec. 36, R.C.M. 1935; R.C.M. 1947, 83-403.

1-1-405. Persons not citizens. Persons in this state not its citizens are either:

(1) citizens of other states; or

(2) aliens.

History: En. Sec. 83, Pol. C. 1895; re-en. Sec. 36, Rev. C. 1907; re-en. Sec. 37, R.C.M. 1921; Cal. Pol. C. Sec. 57; re-en. Sec. 37, R.C.M. 1935; R.C.M. 1947, 83-404.

Part 5

State Symbols — Official Designations

1-1-520. Display of historical writings or documents in or on public buildings or on state land — definitions. (1) Subject to the provisions of subsection (3), a state agency or unit of local government may display the national motto, “in God we trust”, as adopted by congress in 1998 (36 U.S.C. 302), in or on public buildings or state-owned land occupied by a state agency or unit of local government. For purposes of this section, the use of the word “God” is not intended to further the establishment of any specific religion or set of religious beliefs or to dissuade the free exercise of any religion or set of religious beliefs.

(2) In addition to the national motto, the legislature encourages the display of other historical documents in or on public buildings and state-owned land, including but not limited to:

(a) the Declaration of Independence;

(b) the United States constitution;

(c) the pledge of allegiance;

(d) the national anthem;

(e) the Mayflower Compact;

(f) the writings, speeches, documents, and proclamations of the founders and the presidents of the United States;

(g) writings from United States supreme court decisions;

(h) organic documents from the precolonial, colonial, revolutionary, federalist, and postfederalist eras;

(i) acts of the United States congress, including the published text of the Congressional Record;

(j) United States treaties; and

(k) any other writings, documents, or proclamations that are permanently displayed in a historic context in the United States capitol.

(3) The content of any writing, document, or record described in subsection (2) may not be censored solely because the writing, document, or record contains religious references, nor may any writings, documents, or material be selected for display in order to advance a particular religious, partisan, or sectarian purpose.

(4) As used in this section, the following definitions apply:

(a) “Local government” has the meaning provided in 1-2-116.

- (b) “State agency” has the meaning provided in 1-2-116.
History: En. Sec. 1, Ch. 372, L. 2005.

CHAPTER 2 STATUTORY CONSTRUCTION

Part 1 General Provisions

1-2-101. Role of the judge — preference to construction giving each provision meaning. In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.

History: En. Sec. 612, p. 198, L. 1877; re-en. Sec. 612, 1st Div. Rev. Stat. 1879; re-en. Sec. 630, 1st Div. Comp. Stat. 1887; re-en. Sec. 3134, C. Civ. Proc. 1895; re-en. Sec. 7875, Rev. C. 1907; re-en. Sec. 10519, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1858; re-en. Sec. 10519, R.C.M. 1935; R.C.M. 1947, 93-401-15(part).

1-2-102. Intention of the legislature — particular and general provisions. In the construction of a statute, the intention of the legislature is to be pursued if possible. When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it.

History: En. Sec. 613, p. 198, L. 1877; re-en. Sec. 613, 1st Div. Rev. Stat. 1879; re-en. Sec. 631, 1st Div. Comp. Stat. 1887; re-en. Sec. 3135, C. Civ. Proc. 1895; re-en. Sec. 7876, Rev. C. 1907; re-en. Sec. 10520, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1859; re-en. Sec. 10520, R.C.M. 1935; R.C.M. 1947, 93-401-16(part).

1-2-103. Statutes in derogation of the common law — liberal construction. The rule of the common law that statutes in derogation thereof are to be strictly construed has no application to the statutes of the state of Montana. The statutes establish the law of this state respecting the subjects to which they relate, and their provisions and all proceedings under them are to be liberally construed with a view to effect their objects and to promote justice.

History: En. Sec. 4, Pol. C. 1895; re-en. Sec. 4, Rev. C. 1907; amd. Sec. 2, Ch. 4, L. 1921; re-en. Sec. 4, R.C.M. 1921; Cal. Pol. C. Sec. 4; re-en. Sec. 4, R.C.M. 1935; R.C.M. 1947, 12-202.

1-2-104. Preference to construction favoring natural right. When a statute is equally susceptible of two interpretations, one in favor of natural right and the other against it, the former is to be adopted.

History: En. Sec. 620, p. 200, L. 1877; re-en. Sec. 620, 1st Div. Rev. Stat. 1879; re-en. Sec. 638, 1st Div. Comp. Stat. 1887; re-en. Sec. 3142, C. Civ. Proc. 1895; re-en. Sec. 7883, Rev. C. 1907; re-en. Sec. 10527, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1866; re-en. Sec. 10527, R.C.M. 1935; R.C.M. 1947, 93-401-23(part).

1-2-105. General definitional rules — verb tense, gender, and number. The following rules apply in this code:

- (1) The present tense includes the future as well as the present.
- (2) Words used in the masculine gender include the feminine and neuter.
- (3) The singular includes the plural and the plural the singular.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part).

1-2-106. Construction of words and phrases. Words and phrases used in the statutes of Montana are construed according to the context and the approved usage of the language, but technical words and phrases and such others as have acquired a peculiar and appropriate meaning in law or are defined in chapter 1, part 2, as amended, are to be construed according to such peculiar and appropriate meaning or definition.

History: En. Sec. 15, Pol. C. 1895; re-en. Sec. 15, Rev. C. 1907; amd. Sec. 3, Ch. 4, L. 1921; re-en. Sec. 15, R.C.M. 1921; Cal. Pol. C. Sec. 16; re-en. Sec. 15, R.C.M. 1935; R.C.M. 1947, 19-102.

1-2-107. Applicability of definitions. Whenever the meaning of a word or phrase is defined in any part of this code, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears.

History: En. Sec. 4661, Civ. C. 1895; re-en. Sec. 6223, Rev. C. 1907; re-en. Sec. 8776, R.C.M. 1921; Field Civ. C. Sec. 2000; re-en. Sec. 8776, R.C.M. 1935; R.C.M. 1947, 12-215.

1-2-108. Reference to other titles, chapters, parts, sections, or subsections — subsequent amendments. (1) A statute which refers to a title, chapter, part, section, or subsection number without further identification or attribution is presumed, unless the context clearly indicates otherwise, to refer to a title, chapter, part, section, or subsection of the Montana Code Annotated.

(2) A specific or implied reference to a title, chapter, part, section, or subsection of the Montana Code Annotated is presumed to be a reference to that title, chapter, part, section, or subsection as it may be amended or changed from time to time. This presumption may be overcome only by a clear showing that a subsequent amendment or change in the title, chapter, part, section, or subsection is inconsistent with the continued purpose or meaning of the section referring to it.

(3) The presumption contained in subsection (2) applies retroactively as well as prospectively to any reference to a title, chapter, part, section, or subsection of the Montana Code Annotated, regardless of when the reference was created.

History: En. Sec. 1, Ch. 4, L. 1975; amd. Sec. 1, Ch. 309, L. 1977; R.C.M. 1947, 12-216; amd. Sec. 1, Ch. 30, L. 1979; amd. Sec. 1, Ch. 6, L. 1983.

1-2-109. When laws retroactive. No law contained in any of the statutes of Montana is retroactive unless expressly so declared.

History: En. Sec. 3, Pol. C. 1895; re-en. Sec. 3, Rev. C. 1907; amd. Sec. 1, Ch. 4, L. 1921; re-en. Sec. 3, R.C.M. 1921; Cal. Pol. C. Sec. 3; re-en. Sec. 3, R.C.M. 1935; R.C.M. 1947, 12-201.

1-2-110. All statutes subject to repeal. Any statute may be repealed at any time except when it is otherwise provided therein. Persons acting under any statute are deemed to have acted in contemplation of this power of repeal.

History: En. Sec. 294, Pol. C. 1895; re-en. Sec. 121, Rev. C. 1907; re-en. Sec. 95, R.C.M. 1921; Cal. Pol. C. Sec. 326; re-en. Sec. 95, R.C.M. 1935; R.C.M. 1947, 43-512.

1-2-111. Effect of code on special, local, and private statutes. Nothing in this code affects any of the provisions of any special, local, or private statutes; but such statutes are recognized as continuing in force notwithstanding the provisions of this code, except so far as they have been repealed or affected by subsequent laws.

History: En. Sec. 18, Pol. C. 1895; re-en. Sec. 18, Rev. C. 1907; re-en. Sec. 18, R.C.M. 1921; Cal. Pol. C. Sec. 19; re-en. Sec. 18, R.C.M. 1935; R.C.M. 1947, 12-209.

1-2-112. Statutes imposing new local government duties. (1) As provided in subsection (3), a law enacted by the legislature that requires a local government unit to perform an activity or provide a service or facility that requires the direct expenditure of additional funds and that is not expected of local governments in the scope of their usual operations must provide a specific means to finance the activity, service, or facility other than a mill levy. Any law that fails to provide a specific means to finance any activity, service, or facility is not effective until specific means of financing are provided by the legislature from state or federal funds.

(2) Subsequent legislation may not be considered to supersede or modify any provision of this section by implication. Subsequent legislation may supersede or modify the provisions of this section if the legislation does so expressly.

(3) The mandates that the legislature is required to fund under subsection (1) are legislatively imposed requirements that are not necessary for the operation of local governments but that provide a valuable service or benefit to Montana citizens, including but not limited to:

(a) entitlement mandates that provide that certain classes of citizens may receive specific benefits;

(b) membership mandates that require local governments to join specific organizations, such as waste districts or a national organization of regulators; and

(c) service level mandates requiring local governments to meet certain minimum standards.

(4) Subsection (1) does not apply to:

(a) mandates that are required of local governments as a matter of constitutional law or federal statute or that are considered necessary for the operation of local governments, including but not limited to:

- (i) due process mandates;
- (ii) equal treatment mandates;
- (iii) local government ethics mandates;
- (iv) personnel and employment mandates;
- (v) recordkeeping requirements; or
- (vi) mandates concerning the organizational structure of local governments;
- (b) any law under which the required expenditure of additional local funds is an insubstantial amount that can be readily absorbed into the budget of an existing program. A required expenditure of the equivalent of approximately 1 mill levied on taxable property of the local government unit or \$10,000, whichever is less, may be considered an insubstantial amount.

(c) a law necessary to implement the National Voter Registration Act of 1993, Public Law 103-31.

History: En. 43-517, 43-518 by Secs. 1, 2, Ch. 275, L. 1974; R.C.M. 1947, 43-517, 43-518; amd. Sec. 1, Ch. 217, L. 1979; amd. Sec. 1, Ch. 416, L. 1995; amd. Sec. 1, Ch. 246, L. 1997; amd. Sec. 4, Ch. 574, L. 2001.

1-2-113. Statutes imposing new duties on a school district to provide means of financing. (1) Any law enacted by the legislature that requires a school district to perform an activity or provide a service or facility and that will require the direct expenditure of additional funds must provide a specific means to finance the activity, service, or facility other than the existing property tax mill levy. Any law that fails to provide a specific means to finance the service or facility is not effective until a specific means of financing meeting the requirements of subsection (2) is provided by the legislature.

(2) Financing must be by means of a remission of money by the state for the purpose of funding the activity, service, or facility. Financing must bear a reasonable relationship to the actual cost of performing the activity or providing the service or facility.

(3) Legislation passed and approved may not supersede or modify any provision of this section, except to the extent that the legislation expressly does so.

(4) This section does not apply to any law under which the required expenditure of additional funds by the board of trustees is an insubstantial amount that can be readily absorbed into the budget of an existing program.

History: En. Sec. 1, Ch. 596, L. 1981; amd. Sec. 2, Ch. 416, L. 1995.

1-2-114. Bill restriction. (1) A bill may not be introduced enacting a new law or amending an existing law to require a local government unit to perform an activity or provide a service or facility that requires a direct expenditure of additional funds without a specific means to finance the activity, service, or facility in violation of 1-2-112 or 1-2-113.

(2) The estimate of fiscal impact provided in accordance with 5-4-210 must be considered in determination of whether a bill is introduced in violation of subsection (1).

History: En. Sec. 3, Ch. 416, L. 1995.

1-2-115. Enforcement. (1) A local government unit may use a remedy provided in subsection (2), (3), or (4) to prevent the application of a law enacted in violation of 1-2-112 or 1-2-113.

(2) A local government may, with the consent of a state agency charged with the implementation of the law, arbitrate the application of the law pursuant to the Uniform Arbitration Act.

(3) A local government unit may request a hearing before an administrative agency charged with the administration of the law. A hearing held pursuant to this section is a contested case proceeding pursuant to the Montana Administrative Procedure Act. The decision of the agency may be appealed in accordance with Title 2, chapter 4, part 7.

(4) A local government unit may bring a civil action in the district court of the county in which the local government unit is located to prevent the application of a law enacted in violation of 1-2-112 or 1-2-113. The state of Montana may be named as the respondent or defendant in an action brought pursuant to this section.

History: En. Sec. 5, Ch. 416, L. 1995.

1-2-116. State agencies not to shift cost to local governments. (1) A state agency may not take any action prohibited by subsection (2) without authorization in state law.

(2) A state agency may not demand, bill, request, or otherwise require a local government to take any of the following actions or make the provision of a service to a local government that is required by state law to be provided to that government contingent on the local government taking any of the following actions:

(a) pay for all or part of the administrative costs of a program, activity, or undertaking required by state law to be carried out primarily by a state agency;

(b) pay for costs of computer hardware or software used in the operation of a state program, activity, or undertaking or pay for the application of either hardware or software in a state program;

(c) pay for forms required to be completed either by a local government or by third persons through a local government office and used by or filed with a state agency; or

(d) pay for the filing in a state office of forms required by state law to be completed by a local government.

(3) (a) A local government may refuse to pay for services billed or charged to it by a state agency in violation of this section. Upon refusal by the local government, the state agency may send to the local government a written notice of the program or activity for which the local government is billed, a detailed statement of the amount of the bill or charge, and a citation to the legal authority requiring the local government to pay the bill or charge.

(b) Within 30 days of receipt of the notice required by this subsection (3), the local government shall pay the bill or charge or request a hearing before the state agency. Upon request, the state agency shall provide a hearing. If a local government fails to pay the bill or charge and fails to request a hearing, the state agency may initiate a contested case proceeding. Proceedings authorized by this subsection must be held in accordance with the provisions of the Montana Administrative Procedure Act governing contested cases. A decision of the state agency following opportunity for a hearing may be appealed to the district court as provided in 2-4-702.

(4) The remedy provided in subsection (3) is exclusive of any other remedy provided in law for a state agency claiming a right to recover an administrative cost from a local government and is exclusive of any other remedy provided in law for a local government refusing to pay a bill or charge of a state agency.

(5) This section does not apply to services provided by a state agency pursuant to a written or oral contract.

(6) The following definitions apply to this section:

(a) "Administrative cost" means the cost of administering a program, activity, or undertaking, including costs for salaries, wages, rent, heat, electricity, computer hardware, computer software, telephone, travel, equipment, supplies, or postage.

(b) "Local government" means a county, city, town, township, school district, or other district or local public entity with the authority to spend or receive public funds.

(c) "State agency" means a department, board, commission, office, bureau, or other public authority of state government.

History: En. Sec. 1, Ch. 496, L. 1995.

Part 2

Effect of Legislature's Actions

1-2-201. Statutes — effective date. (1) (a) Except as provided in subsection (1)(b), (1)(c), or (1)(d), every statute adopted after January 1, 1981, takes effect on the first day of October following its passage and approval unless a different time is prescribed in the enacting legislation.

(b) Subject to subsection (1)(d), every statute providing for appropriation by the legislature for public funds for a public purpose takes effect on the first day of July following its passage and approval unless a different time is prescribed in the enacting legislation.

(c) Subject to subsection (1)(d), every statute providing for the taxation of or the imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed in the enacting legislation.

(d) Every statute enacted during a special session of the legislature takes effect upon passage and approval unless a different time is prescribed in the enacting legislation.

(2) “Passage”, as used in subsection (1), means the enactment into law of a bill, which has passed the legislature, either with or without the approval of the governor, as provided in the constitution.

History: (1) En. Sec. 3466, C. Civ. Proc. 1895; re-en. Sec. 8074, Rev. C. 1907; amd. Sec. 1, Ch. 92, L. 1921; re-en. Sec. 90, R.C.M. 1921; Cal. Pol. C. Sec. 323; re-en. Sec. 90, R.C.M. 1935; Sec. 43-507, R.C.M. 1947; (2) En. Sec. 3467, C. Civ. Proc. 1895; re-en. Sec. 8075, Rev. C. 1907; re-en. Sec. 91, R.C.M. 1921; re-en. Sec. 91, R.C.M. 1935; amd. Sec. 20, Ch. 100, L. 1973; amd. Sec. 9, Ch. 309, L. 1977; Sec. 43-508, R.C.M. 1947; R.C.M. 1947, 43-507, 43-508; amd. Sec. 2, Ch. 119, L. 1979; amd. Sec. 1, Ch. 466, L. 1981; amd. Sec. 1, Ch. 604, L. 1991; amd. Sec. 1, Ch. 18, L. 1995; amd. Sec. 1, Ch. 104, L. 2003.

1-2-202. Joint resolutions — effective date. Every joint resolution, unless a different time is prescribed therein, takes effect from its passage.

History: En. Sec. 291, Pol. C. 1895; re-en. Sec. 118, Rev. C. 1907; re-en. Sec. 92, R.C.M. 1921; Cal. Pol. C. Sec. 324; re-en. Sec. 92, R.C.M. 1935; R.C.M. 1947, 43-509.

1-2-203. Effect of amendment of statute. Where a section or a part of a statute is amended, it is not to be considered as having been repealed and reenacted in the amended form, but the portions which are not altered are to be considered as having been the law from the time when they were enacted, and the new provisions are to be considered as having been enacted at the time of the amendment.

History: En. Sec. 292, Pol. C. 1895; re-en. Sec. 119, Rev. C. 1907; re-en. Sec. 93, R.C.M. 1921; Cal. Pol. C. Sec. 325; re-en. Sec. 93, R.C.M. 1935; R.C.M. 1947, 43-510.

1-2-204. Amendment of repealed act void. An act amending a section of an act repealed is void.

History: En. Sec. 297, Pol. C. 1895; re-en. Sec. 124, Rev. C. 1907; re-en. Sec. 98, R.C.M. 1921; Cal. Pol. C. Sec. 330; re-en. Sec. 98, R.C.M. 1935; R.C.M. 1947, 43-515.

1-2-205. Repeal of law creating criminal offense. The repeal of any law creating a criminal offense does not constitute a bar to an indictment or information and the punishment of an act already committed in violation of the law so repealed unless the intention to bar such indictment or information and punishment is expressly declared in the repealing act.

History: En. Sec. 8, p. 390, Cod. Stat. 1871; re-en. Sec. 152, 5th Div. Rev. Stat. 1879; re-en. Sec. 209, 5th Div. Comp. Stat. 1887; amd. Sec. 296, Pol. C. 1895; re-en. Sec. 123, Rev. C. 1907; re-en. Sec. 97, R.C.M. 1921; Cal. Pol. C. Sec. 329; re-en. Sec. 97, R.C.M. 1935; R.C.M. 1947, 43-514.

1-2-206. Repeal of repealed statute. The repeal of any statute or part of a statute heretofore repealed must not be so construed as a declaration, express or by implication, that such statute or part of a statute has been in force at any time subsequent to such first repeal.

History: En. Sec. 5180, Pol. C. 1895; re-en. Sec. 3560, Rev. C. 1907; re-en. Sec. 5526, R.C.M. 1921; Cal. Pol. C. Sec. 4504; re-en. Sec. 5526, R.C.M. 1935; R.C.M. 1947, 12-213.

1-2-207. Repeal of repealing act — no revival. No act or part of an act repealed by another act of the legislature is revived by the repeal of the repealing act without express words reviving such repealed act or part of an act.

History: En. Sec. 2, p. 390, Cod. Stat. 1871; re-en. Sec. 146, 5th Div. Rev. Stat. 1879; re-en. Sec. 203, 5th Div. Comp. Stat. 1887; amd. Sec. 295, Pol. C. 1895; re-en. Sec. 122, Rev. C. 1907; re-en. Sec. 96, R.C.M. 1921; Cal. Pol. C. Sec. 328; re-en. Sec. 96, R.C.M. 1935; R.C.M. 1947, 43-513.

1-2-208. Provisions of law not codified in Montana Code Annotated because redundant. (1) Whenever a provision of law codified in the Montana Code Annotated is amended in such a way that it conflicts with a provision of law that was not codified in the Montana Code Annotated because such uncoded provision was redundant with such codified provision, the codified provision, as amended, governs and must be given effect over the uncoded provision.

(2) Repeal or deletion of a provision of the Montana Code Annotated also repeals or deletes a provision of law that was not codified in the Montana Code Annotated because it was redundant with the repealed or deleted provision of the Montana Code Annotated, whether or not the repealed or deleted provision of the Montana Code Annotated was amended prior to its repeal or deletion.

History: En. Sec. 1, Ch. 79, L. 1985.

CHAPTER 6
OATHS**Part 1**
General Provisions

1-6-101. Officers who may administer oaths. Every court, judge, clerk of any court, justice, notary public, and officer or person authorized to take testimony in any action or proceeding or to decide upon evidence has power to administer oaths or affirmations.

History: En. Sec. 360, p. 118, Bannack Stat.; re-en. Sec. 418, p. 219, L. 1867; re-en. Sec. 492, p. 135, Cod. Stat. 1871; amd. Sec. 671, p. 214, L. 1877; re-en. Sec. 671, 1st Div. Rev. Stat. 1879; re-en. Sec. 693, 1st Div. Comp. Stat. 1887; amd. Sec. 3430, C. Civ. Proc. 1895; re-en. Sec. 8049, Rev. C. 1907; re-en. Sec. 10693, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2093; re-en. Sec. 10693, R.C.M. 1935; R.C.M. 1947, 93-2401-1.

1-6-102. Form of ordinary oath. An oath or affirmation in an action or proceeding may be administered by the person who swears or affirms expressing that person's assent when addressed with "You do solemnly swear (or affirm, as the case may be) that the evidence you will give in this issue (or matter), pending between and, is the truth, the whole truth, and nothing but the truth, so help you God".

History: En. Sec. 3431, C. Civ. Proc. 1895; re-en. Sec. 8050, Rev. C. 1907; re-en. Sec. 10694, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2094; re-en. Sec. 10694, R.C.M. 1935; R.C.M. 1947, 93-2401-2; amd. Sec. 32, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

1-6-103. Variation of oath to suit witness's belief. The court shall vary the mode of swearing or affirming to accord with the witness's beliefs whenever it is satisfied that the witness has a distinct mode of swearing or affirming.

History: En. Sec. 3432, C. Civ. Proc. 1895; re-en. Sec. 8051, Rev. C. 1907; re-en. Sec. 10695, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2095; re-en. Sec. 10695, R.C.M. 1935; R.C.M. 1947, 93-2401-3; amd. Sec. 9, Ch. 119, L. 1979.

1-6-104. Affirmation or declaration in lieu of oath. Any person who desires it may instead of taking an oath make a solemn affirmation or declaration by assenting when addressed with "You do solemnly affirm (or declare), etc.", as provided in 1-6-102.

History: En. Sec. 362, p. 118, Bannack Stat.; en. Sec. 420, p. 219, L. 1867; re-en. Sec. 494, p. 135, Cod. Stat. 1871; amd. Sec. 673, p. 215, L. 1877; re-en. Sec. 673, 1st Div. Rev. Stat. 1879; re-en. Sec. 695, 1st Div. Comp. Stat. 1887; amd. Sec. 3434, C. Civ. Proc. 1895; re-en. Sec. 8053, Rev. C. 1907; re-en. Sec. 10697, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2097; re-en. Sec. 10697, R.C.M. 1935; R.C.M. 1947, 93-2401-5; amd. Sec. 33, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

TITLE 2
GOVERNMENT STRUCTURE
AND ADMINISTRATION**CHAPTER 1**
SOVEREIGNTY AND JURISDICTION**Part 3**
Jurisdiction on Indian Lands

2-1-301. Assumption of criminal jurisdiction of Flathead Indian country. The state of Montana hereby obligates and binds itself to assume, as herein provided, criminal jurisdiction over Indians and Indian territory of the Flathead Indian reservation and country within the state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd congress, 1st session).

2007 School Laws of Montana

History: En. Sec. 1, Ch. 81, L. 1963; R.C.M. 1947, 83-801.

2-1-302. Resolution of Indian tribes requesting state jurisdiction — governor's proclamation — consent of county commissioners. (1) Whenever the governor of this state receives from the tribal council or other governing body of the Confederated Salish and Kootenai Indian tribes or any other community, band, or group of Indians in this state, a resolution expressing its desire that its people and lands be subject to the criminal or civil jurisdiction, or both, of the state to the extent authorized by federal law and regulation, the governor shall issue within 60 days a proclamation to the effect that the specified jurisdiction applies to those Indians and their territory or reservation in accordance with the provisions of this part.

(2) The governor may not issue the proclamation until the resolution has been approved in the manner provided for by the charter, constitution, or other fundamental law of the tribe, if the document provides for approval, and there has been first obtained the consent of the board of county commissioners of each county that encompasses any portion of the reservation of the tribe.

History: En. Sec. 2, Ch. 81, L. 1963; R.C.M. 1947, 83-802; amd. Sec. 2, Ch. 184, L. 1979; amd. Sec. 34, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-1-303. Date of assumption of jurisdiction — application of state law in Indian country. Sixty days from the date of issuance of the proclamation of the governor as provided for by 2-1-302, the state of Montana shall assume jurisdiction over offenses committed by or against Indians in the lands prescribed in the proclamation to the same extent that this state has jurisdiction over offenses committed elsewhere within this state. The criminal and/or civil laws of this state shall have the same force and effect within such lands as they have elsewhere within this state.

History: En. Sec. 3, Ch. 81, L. 1963; R.C.M. 1947, 83-803.

2-1-304. Rights, privileges, and immunities reserved to Indians. Nothing in this part shall:

(1) authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States;

(2) authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto;

(3) confer jurisdiction upon the state of Montana to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein; or

(4) deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under federal treaty, agreement, statute, or executive order with respect to hunting, trapping, fishing, or the control, licensing, or regulation thereof.

History: En. Sec. 4, Ch. 81, L. 1963; R.C.M. 1947, 83-804.

2-1-305. Indian culture protected. Nothing in this part shall deprive the Indian tribe, band, or community from carrying on its age-old tribal dances, feasting, or customary Indian celebrations or in any way try to destroy the Indian culture.

History: En. Sec. 5, Ch. 81, L. 1963; R.C.M. 1947, 83-805.

2-1-306. Withdrawal of consent to state jurisdiction. (1) No sooner than 6 months after April 24, 1993, and after consulting with local government officials concerning implementation, the Confederated Salish and Kootenai tribes may, by tribal resolution, withdraw consent to be subject to the criminal misdemeanor jurisdiction of the state of Montana. Within 6 months after receipt of the resolution, the governor shall issue a proclamation to that effect.

(2) The Confederated Salish and Kootenai tribes may, by separate resolution, withdraw consent to be subject to those areas of civil jurisdiction of the state of Montana that are delineated in tribal ordinance 40-A (revised and enacted May 5, 1965). The withdrawal is limited to those delineated areas of civil jurisdiction agreed upon in writing by the governor after consultation with the attorney general and officials of affected local governments. The tribes shall initiate this process by sending a certified letter to the governor. After consultation and

execution of a written agreement between the governor and the tribes, the agreed-upon civil areas must be incorporated into a tribal resolution to be enacted by the tribes. Within 6 months after receipt of the tribal resolution, the governor shall issue a proclamation to that effect that reflects the terms of the written agreement.

(3) Subsections (1) and (2) do not alter the existing jurisdiction or authority of the Confederated Salish and Kootenai tribes or the state of Montana, except as expressly provided for in subsections (1) and (2).

History: En. Sec. 6, Ch. 81, L. 1963; R.C.M. 1947, 83-806; amd. Sec. 1, Ch. 542, L. 1993.

2-1-307. Service of process. All legal process of the state, both civil and criminal, may be served upon persons and property found on any Indian reservation in all cases where the United States has not exclusive jurisdiction.

History: En. Sec. 41, Pol. C. 1895; re-en. Sec. 22, Rev. C. 1907; re-en. Sec. 21, R.C.M. 1921; re-en. Sec. 21, R.C.M. 1935; R.C.M. 1947, 83-103(part).

Part 4

Federal Mandates Act

2-1-401. Short title. This part may be cited as the “Federal Mandates Act”.

History: En. Sec. 1, Ch. 385, L. 1995.

2-1-402. Legislative declaration. (1) (a) In enacting this part, the legislature employs its legislative authority to establish that the people of the state of Montana, acting through their elected officials in state government, have the responsibility and authority to establish policy in and for Montana pertaining to federal programs mandated in federal statutes.

(b) The intent of the legislature is to ensure the primacy of the state of Montana’s legal and political authority to implement in and for Montana the policy mandated by federal statutes and to vigorously challenge and scrutinize the extent and scope of authority asserted by federal executive branch agencies when federal agency actions and interpretations are inconsistent with Montana policy and exceed the lawful authority of the federal government or are not required by federal law.

(c) In this regard, the Montana legislature finds and declares that:

(i) the power to implement federal policies in and for Montana is central to the ability of the people of Montana to govern themselves under a federal system of government; and

(ii) any implementation of federal policies in and for Montana by federal executive branch agencies that is contrary to fundamental notions of federalism and self-determination must be identified and countered.

(2) The legislature further finds and declares that:

(a) there is an urgent need to modify federal mandates because the implementation of these mandates by the state wastes the financial resources of local governments, the citizens of Montana, and the state and does not properly respect the rights of local governments, citizens, and the state;

(b) the state government has an obligation to the public to do what is necessary to protect the rights of Montana citizens under federal law while minimizing or eliminating any additional cost or regulatory burden on any citizen of the state;

(c) the 10th amendment to the United States constitution directs that powers that are not delegated to the United States are reserved to the states or to the people. Montana, as one of the sovereign states within the union, has constitutional authority to enact laws protecting the environment of the state and safeguarding the public health, safety, and welfare of the citizens of Montana. However, this authority has too often been ignored by the federal government. The federal government has intruded more and more into areas that must be left to the states. It is essential that the dilution of the authority of state and local governments be halted and that the provisions of the 10th amendment be accorded proper respect.

(d) current federal regulatory mandates, as reflected in federal administrative regulations, guidelines, and policies, often do not reflect the realities of the Rocky Mountain region, and federal regulators frequently do not understand the needs and priorities of the citizens of Montana;

(e) the citizens of this state can create and wish to create innovative solutions to Montana's problems, but the current manner in which legal challenges to state policies and federal programmatic substitutions of state programs are handled does not allow the state the flexibility it needs. It is not possible for the state of Montana to effectively and efficiently implement the provisions of federal statutes unless the burden to prove the insufficiency of the state's efforts to implement federal requirements is shifted to the person or agency who asserts the insufficiency.

(f) the provisions of this part will better balance the exercise of the powers of the federal government and the powers reserved to the states. In addition, the application of this part ultimately will bring about greater protection for the state and the nation because it will direct the state to implement federal statutes at the least possible cost and will make more money available for other needs.

(g) the purpose of this part is to ensure that federal mandates existing on or adopted after April 12, 1995, that are implemented in Montana comply with state policy as established by the legislature;

(h) nothing in this part may be construed to create a private cause of action.

History: En. Sec. 2, Ch. 385, L. 1995.

2-1-403. Definitions. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Federal statute" means a federal statute that is in accord with the United States constitution and that imposes mandates on state or local governments.

(2) "Legislative council" means the statutory committee established in 5-11-101.

History: En. Sec. 3, Ch. 385, L. 1995.

2-1-404. State programs to implement federal statutes. (1) A state official or employee charged with the duty of implementing a federal statute shall implement the law as required by the federal statute in good faith and with a critical view toward the provisions of any federal regulation, guideline, or policy in order to identify those provisions of any federal regulation, guideline, or policy that are inconsistent with Montana policy or do not advance Montana policy in a cost-effective manner.

(2) An executive branch agency of state government that is authorized to develop a state program to respond to any mandates contained in a federal statute shall develop the state program and promulgate any necessary rules, using the following criteria:

(a) State programs should be developed by the state agency to meet the requirements of federal statutes in good faith and with a critical view toward any federal regulations, guidelines, or policies.

(b) State programs should be developed with due consideration of the financial restraints of local governments, the citizens of Montana, and the state, including the limitation imposed by Article VIII, section 9, of the Montana constitution.

(c) A state program that implements the goals of the federal statute should provide for the most efficient method possible, with careful consideration given to the cost of the program and the impact of the program on local governments and Montana citizens and on the long-range public health, safety, and welfare of citizens of the state.

History: En. Sec. 4, Ch. 385, L. 1995.

2-1-405. Requirement for budget recommendation — reporting on federal mandates — savings. Prior to recommending to the legislature a budget for a state agency that is charged with implementing federal mandates, the governor shall require that the state agency provide information regarding any monetary savings for the state and any reduction in regulatory burdens on local governments and on the public that could be or have been achieved through the development of state policies that meet the intent of applicable federal statutes but do not necessarily follow all applicable federal regulations, guidelines, or policies. The state agency shall also provide advice to the governor regarding any changes in state statutes that are necessary to provide the state agency the authority to implement state policies in such a way as to create additional savings or greater reductions in regulatory burdens. The governor shall review and compile the information received from state agencies pursuant to this section and shall include recommendations in the governor's budget based upon the information.

History: En. Sec. 5, Ch. 385, L. 1995.

2-1-406. Information regarding federal mandates. (1) The information prepared pursuant to 2-1-405 must be received by the governor prior to the governor's preparation of the state budget for the ensuing biennium. The governor may prepare additional requests for information to follow up and obtain further details regarding the initial responses that were received.

(2) In considering the legality or cost-effectiveness of a federal mandate, federal statute, or state program, the governor may request assistance from the legislative council or its staff, but assistance is at the discretion of the legislative council.

History: En. Sec. 6, Ch. 385, L. 1995.

2-1-407. Report — recommendations. (1) The governor shall examine the information received pursuant to 2-1-405 and, based upon the information, shall present a report to the legislature meeting in its next regular session that includes the following:

(a) recommendations regarding contracts that the state may enter into with specified persons or entities to conduct research, to analyze certain subjects, or to provide other services regarding federal mandates; and

(b) estimates of the cost of the federal mandate efforts submitted to the governor under the provisions of 2-1-405.

(2) If there is a finding that a federal mandate does not meet Montana's cost-effective needs, does not serve Montana public policy, or does not conform to Montana customs and culture, the governor may issue an executive order declaring the intention of Montana to not implement the mandate and may direct the attorney general to vigorously represent the state of Montana in any action that results from or that is necessary to effect the executive order.

History: En. Sec. 7, Ch. 385, L. 1995.

2-1-408. Legislative review and oversight. (1) In exercising its authority as an equal branch of state government, the legislature may conduct any legal review or fiscal analysis that it considers necessary to effect the purpose and intent of this part. The governor, the director or chief executive officer of any agency within the executive branch, or any officer listed in Article VI, section 1, of the Montana constitution shall, upon request by the legislature, immediately provide any information prepared, compiled, developed, detailed, described, referenced, analyzed, reported, or in any other manner considered in conjunction with this part.

(2) In receiving the information described in subsection (1), the legislature is bound by the provisions of Article II, sections 9 and 10, of the Montana constitution.

(3) For the purposes of this section, the legislature includes the senate and the house of representatives, acting jointly or separately, and includes the legislative council.

(4) The legislature may request the assistance of any staff employed by the legislature.

History: En. Sec. 8, Ch. 385, L. 1995.

CHAPTER 2 STANDARDS OF CONDUCT

Part 1 Code of Ethics

2-2-101. Statement of purpose. The purpose of this part is to set forth a code of ethics prohibiting conflict between public duty and private interest as required by the constitution of Montana. This code recognizes distinctions between legislators, other officers and employees of state government, and officers and employees of local government and prescribes some standards of conduct common to all categories and some standards of conduct adapted to each category. The provisions of this part recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

History: En. 59-1701 by Sec. 1, Ch. 569, L. 1977; R.C.M. 1947, 59-1701.

2-2-102. Definitions. As used in this part, the following definitions apply:

(1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

(2) “Compensation” means any money or economic benefit conferred on or received by any person in return for services rendered or to be rendered by the person or another.

(3) (a) “Gift of substantial value” means a gift with a value of \$50 or more for an individual.

(b) The term does not include:

(i) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization or the state and that is not claimed as a charitable contribution for federal income tax purposes;

(ii) food and beverages consumed on the occasion when participation in a charitable, civic, or community event bears a relationship to the public officer’s or public employee’s office or employment or when the officer or employee is in attendance in an official capacity;

(iii) educational material directly related to official governmental duties;

(iv) an award publicly presented in recognition of public service; or

(v) educational activity that:

(A) does not place or appear to place the recipient under obligation;

(B) clearly serves the public good; and

(C) is not lavish or extravagant.

(4) “Local government” means a county, a consolidated government, an incorporated city or town, a school district, or a special district.

(5) “Official act” or “official action” means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority.

(6) “Private interest” means an interest held by an individual that is:

(a) an ownership interest in a business;

(b) a creditor interest in an insolvent business;

(c) an employment or prospective employment for which negotiations have begun;

(d) an ownership interest in real property;

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

(7) “Public employee” means:

(a) any temporary or permanent employee of the state;

(b) any temporary or permanent employee of a local government;

(c) a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority; and

(d) a person under contract to the state.

(8) “Public officer” includes any state officer and any elected officer of a local government.

(9) “Special district” means a unit of local government, authorized by law to perform a single function or a limited number of functions. The term includes but is not limited to conservation districts, water districts, weed management districts, irrigation districts, fire districts, community college districts, hospital districts, sewer districts, and transportation districts. The term also includes any district or other entity formed by interlocal agreement.

(10) (a) “State agency” includes:

(i) the state;

(ii) the legislature and its committees;

(iii) all executive departments, boards, commissions, committees, bureaus, and offices;

(iv) the university system; and

(v) all independent commissions and other establishments of the state government.

(b) The term does not include the judicial branch.

(11) “State officer” includes all elected officers and directors of the executive branch of state government as defined in 2-15-102.

History: En. 59-1702 by Sec. 2, Ch. 569, L. 1977; R.C.M. 1947, 59-1702; amd. Sec. 3, Ch. 18, L. 1995; amd. Sec. 1, Ch. 562, L. 1995; amd. Sec. 1, Ch. 122, L. 2001.

2-2-103. Public trust — public duty. (1) The holding of public office or employment is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees. A public officer, legislator, or public employee shall carry out the individual’s duties for the benefit of the people of the state.

(2) A public officer, legislator, or public employee whose conduct departs from the person's public duty is liable to the people of the state and is subject to the penalties provided in this part for abuse of the public's trust.

(3) This part sets forth various rules of conduct, the transgression of any of which is a violation of public duty, and various ethical principles, the transgression of any of which must be avoided.

(4) (a) The enforcement of this part for:

(i) state officers, legislators, and state employees is provided for in 2-2-136;

(ii) legislators, involving legislative acts, is provided for in 2-2-135 and for all other acts is provided for in 2-2-136;

(iii) local government officers and employees is provided for in 2-2-144.

(b) Any money collected in the civil actions that is not reimbursement for the cost of the action must be deposited in the general fund of the unit of government.

History: En. 59-1703 by Sec. 3, Ch. 569, L. 1977; R.C.M. 1947, 59-1703; amd. Sec. 216, Ch. 685, L. 1989; amd. Sec. 2, Ch. 562, L. 1995; amd. Sec. 2, Ch. 122, L. 2001.

2-2-104. Rules of conduct for public officers, legislators, and public employees. (1)

Proof of commission of any act enumerated in this section is proof that the actor has breached the actor's public duty. A public officer, legislator, or public employee may not:

(a) disclose or use confidential information acquired in the course of official duties in order to further substantially the individual's personal economic interests; or

(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

(i) that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties; or

(ii) that the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken.

(2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of the services. Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.

(3) (a) Except as provided in subsection (3)(b), a public officer, legislator, or public employee may not receive salaries from two separate public employment positions that overlap for the hours being compensated, unless:

(i) the public officer, legislator, or public employee reimburses the public entity from which the employee is absent for the salary paid for performing the function from which the officer, legislator, or employee is absent; or

(ii) the public officer's, legislator's, or public employee's salary from one employer is reduced by the amount of salary received from the other public employer in order to avoid duplicate compensation for the overlapping hours.

(b) Subsection (3)(a) does not prohibit:

(i) a public officer, legislator, or public employee from receiving income from the use of accrued leave or compensatory time during the period of overlapping employment; or

(ii) a public school teacher from receiving payment from a college or university for the supervision of student teachers who are enrolled in a teacher education program at the college or university if the supervision is performed concurrently with the school teacher's duties for a public school district.

(c) In order to determine compliance with this subsection (3), a public officer, legislator, or public employee subject to this subsection (3) shall disclose the amounts received from the two separate public employment positions to the commissioner of political practices.

History: En. 59-1704 by Sec. 4, Ch. 569, L. 1977; R.C.M. 1947, 59-1704; amd. Sec. 3, Ch. 562, L. 1995; amd. Sec. 1, Ch. 243, L. 1997.

2-2-105. Ethical requirements for public officers and public employees. (1) The

requirements in this section are intended as rules of conduct, and violations constitute a breach of the public trust and public duty of office or employment in state or local government.

(2) Except as provided in subsection (4), a public officer or public employee may not acquire an interest in any business or undertaking that the officer or employee has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the officer's or employee's agency.

(3) A public officer or public employee may not, within 12 months following the voluntary termination of office or employment, obtain employment in which the officer or employee will take direct advantage, unavailable to others, of matters with which the officer or employee was directly involved during a term of office or during employment. These matters are rules, other than rules of general application, that the officer or employee actively helped to formulate and applications, claims, or contested cases in the consideration of which the officer or employee was an active participant.

(4) When a public employee who is a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority is required to take official action on a matter as to which the public employee has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the public employee's influence, benefit, or detriment in regard to the matter, the public employee shall disclose the interest creating the conflict prior to participating in the official action.

(5) A public officer or public employee may not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when the officer or employee has a substantial personal interest in a competing firm or undertaking.

History: En. 59-1709 by Sec. 9, Ch. 569, L. 1977; R.C.M. 1947, 59-1709; amd. Sec. 4, Ch. 562, L. 1995.

2-2-106. Disclosure. (1) (a) Prior to December 15 of each even-numbered year, each state officer or holdover senator shall file with the commissioner of political practices a business disclosure statement on a form provided by the commissioner. An individual filing pursuant to subsection (1)(b) or (1)(c) is not required to file under this subsection (1)(a) during the same period.

(b) Each candidate for a statewide or a state office elected from a district shall, within 5 days of the time that the candidate files for office, file a business disclosure statement with the commissioner of political practices on a form provided by the commissioner.

(c) An individual appointed to office who would be required to file under subsection (1)(a) or (1)(b) is required to file the business disclosure statement at the earlier of the time of submission of the person's name for confirmation or the assumption of the office.

(2) The statement must provide the following information:

(a) the name, address, and type of business of the individual;

(b) each present or past employing entity from which benefits, including retirement benefits, are currently received by the individual;

(c) each business, firm, corporation, partnership, and other business or professional entity or trust in which the individual holds an interest;

(d) each entity not listed under subsections (2)(a) through (2)(c) in which the individual is an officer or director, regardless of whether or not the entity is organized for profit; and

(e) all real property, other than a personal residence, in which the individual holds an interest. Real property may be described by general description.

(3) An individual may not assume or continue to exercise the powers and duties of the office to which that individual has been elected or appointed until the statement has been filed as provided in subsection (1).

(4) The commissioner of political practices shall make the business disclosure statements available to any individual upon request.

History: En. Sec. 16, I.M. No. 85, approved Nov. 4, 1980; amd. Sec. 12, Ch. 562, L. 1995; Sec. 5-7-213, MCA 1993; redes. 2-2-106 by Code Commissioner, 1995; amd. Sec. 2, Ch. 114, L. 2003; amd. Sec. 2, Ch. 130, L. 2005.

2-2-107 through 2-2-110 reserved.

2-2-111. Rules of conduct for legislators. Proof of commission of any act enumerated in this section is proof that the legislator committing the act has breached the legislator's public duty. A legislator may not:

(1) accept a fee, contingent fee, or any other compensation, except the official compensation provided by statute, for promoting or opposing the passage of legislation;

(2) seek other employment for the legislator or solicit a contract for the legislator's services by the use of the office; or

(3) accept a fee or other compensation, except as provided for in 5-2-302, from a Montana state agency or a political subdivision of the state of Montana for speaking to the agency or political subdivision.

History: En. 59-1705 by Sec. 5, Ch. 569, L. 1977; R.C.M. 1947, 59-1705; amd. Sec. 5, Ch. 562, L. 1995; amd. Sec. 1, Ch. 327, L. 2003.

2-2-112. Ethical requirements for legislators. (1) The requirements in this section are intended as rules for legislator conduct, and violations constitute a breach of the public trust of legislative office.

(2) A legislator has a responsibility to the legislator's constituents to participate in all matters as required in the rules of the legislature. A legislator concerned with the possibility of a conflict may briefly present the facts to the committee of that house that is assigned the determination of ethical issues. The committee shall advise the legislator as to whether the legislator should disclose the interest prior to voting on the issue pursuant to the provisions of subsection (5). The legislator may, subject to legislative rule, vote on an issue on which the legislator has a conflict, after disclosing the interest.

(3) When a legislator is required to take official action on a legislative matter as to which the legislator has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the legislator's influence, benefit, or detriment in regard to the legislative matter, the legislator shall disclose the interest creating the conflict prior to participating in the official action, as provided in subsections (2) and (5) and the rules of the legislature. In making a decision, the legislator shall consider:

(a) whether the conflict impedes the legislator's independence of judgment;

(b) the effect of the legislator's participation on public confidence in the integrity of the legislature;

(c) whether the legislator's participation is likely to have any significant effect on the disposition of the matter; and

(d) whether a pecuniary interest is involved or whether a potential occupational, personal, or family benefit could arise from the legislator's participation.

(4) A conflict situation does not arise from legislation or legislative duties affecting the membership of a profession, occupation, or class.

(5) A legislator shall disclose an interest creating a conflict, as provided in the rules of the legislature. A legislator who is a member of a profession, occupation, or class affected by legislation is not required to disclose an interest unless the class contained in the legislation is so narrow that the vote will have a direct and distinctive personal impact on the legislator. A legislator may seek a determination from the appropriate committee provided for in 2-2-135.

History: En. 59-1708 by Sec. 8, Ch. 569, L. 1977; R.C.M. 1947, 59-1708; amd. Sec. 6, Ch. 562, L. 1995.

2-2-113 through 2-2-120 reserved.

2-2-121. Rules of conduct for public officers and public employees. (1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

(a) subject to subsection (7), use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;

(b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

(3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to:

(i) the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations;

(ii) in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of law governing public meetings of the local board of trustees, including the resulting dissemination of information by a board of trustees or a school superintendent or a designated employee in a district with no superintendent in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the electors.

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

(4) A candidate, as defined in 13-1-101(6)(a), may not use or permit the use of state funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains the candidate's name, picture, or voice except in the case of a state or national emergency and then only if the announcement is reasonably necessary to the candidate's official functions.

(5) A public officer or public employee may not participate in a proceeding when an organization, other than an organization or association of local government officials, of which the public officer or public employee is an officer or director is:

(a) involved in a proceeding before the employing agency that is within the scope of the public officer's or public employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the public officer or public employee represents the state or local government.

(6) A public officer or public employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization, other than an organization or association of local government officials, of which the public officer or public employee is a member while performing the public officer's or public employee's job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized by law.

(7) A listing by a public officer or a public employee in the electronic directory provided for in 30-17-101 of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this section. The public officer or public employee may not make arrangements for the listing in the electronic directory during work hours.

(8) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under 2-2-131.

(9) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

(10) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act.

History: En. 59-1706 by Sec. 6, Ch. 569, L. 1977; R.C.M. 1947, 59-1706; amd. Sec. 1, Ch. 59, L. 1991; amd. Sec. 7, Ch. 562, L. 1995; amd. Sec. 3, Ch. 42, L. 1997; amd. Sec. 3, Ch. 122, L. 2001; amd. Sec. 1, Ch. 58, L. 2003; amd. Sec. 1, Ch. 145, L. 2005; amd. Sec. 3, Ch. 173, L. 2005; amd. Sec. 1, Ch. 437, L. 2005.

2-2-122 through 2-2-124 reserved.

2-2-125. Repealed. Sec. 6, Ch. 122, L. 2001.

History: En. 59-1707 by Sec. 7, Ch. 569, L. 1977; R.C.M. 1947, 59-1707; amd. Sec. 8, Ch. 562, L. 1995.

2-2-126 through 2-2-130 reserved.

2-2-131. Disclosure. A public officer or public employee shall, prior to acting in a manner that may impinge on public duty, including the award of a permit, contract, or license, disclose the nature of the private interest that creates the conflict. The public officer or public employee shall make the disclosure in writing to the commissioner of political practices, listing the amount of private interest, if any, the purpose and duration of the person's services rendered, if any, and the compensation received for the services or other information that is necessary to describe the interest. If the public officer or public employee then performs the official act involved, the officer or employee shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act.

History: En. 59-1710 by Sec. 10, Ch. 569, L. 1977; R.C.M. 1947, 59-1710; amd. Sec. 9, Ch. 562, L. 1995; amd. Sec. 1, Ch. 65, L. 2005.

2-2-132. Repealed. Sec. 22, Ch. 562, L. 1995.

History: En. 59-1711 by Sec. 11, Ch. 569, L. 1977; R.C.M. 1947, 59-1711.

2-2-133 and 2-2-134 reserved.

2-2-135. Ethics committees. (1) Each house of the legislature shall establish an ethics committee. Subject to 5-5-234, the committee must consist of two members of the majority party and two members of the minority party. The committees may meet jointly. Each committee shall educate members concerning the provisions of this part concerning legislators and may consider conflicts between public duty and private interest as provided in 2-2-112. The joint committee may consider matters affecting the entire legislature.

(2) Pursuant to Article V, section 10, of the Montana constitution, the legislature is responsible for enforcement of the provisions of this part concerning legislators.

History: En. Sec. 14, Ch. 562, L. 1995; amd. Sec. 3, Ch. 4, Sp. L. May 2007.

Compiler's Comments

2007 Special Session Amendment: Chapter 4 in (1) in second sentence at beginning inserted "Subject to 5-5-234" and at end after "consist of two members of" substituted "the majority party and two members of the minority party" for "each political party"; and made minor changes in style. Amendment effective May 25, 2007.

Retroactive Applicability: Section 22, Ch. 4, Sp. L. May 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to appointments made for members of the 60th legislature."

2-2-136. Enforcement for state officers, legislators, and state employees — referral of complaint involving county attorney. (1) (a) A person alleging a violation of this part by a state officer, legislator, or state employee may file a complaint with the commissioner of political practices. The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The commissioner also has jurisdiction over complaints against a county attorney that are referred by a local government review panel pursuant to 2-2-144 or filed by a person directly with the commissioner pursuant to 2-2-144(6). The commissioner may request additional information from the complainant or the person who is the subject of the complaint to make an initial determination of whether the complaint states a potential violation of this part.

(b) The commissioner may dismiss a complaint that is frivolous, does not state a potential violation of this part, or does not contain sufficient allegations to enable the commissioner to determine whether the complaint states a potential violation of this part. If the issues presented

in a complaint have been addressed and decided in a prior decision and the commissioner determines that no additional factual development is necessary, the commissioner may issue a summary decision without holding an informal contested case hearing on the complaint.

(c) Except as provided in subsection (1)(b), if the commissioner determines that the complaint states a potential violation of this part, the commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter 4, part 6. The commissioner shall issue a decision based upon the record established before the commissioner.

(2) If the commissioner determines that a violation of this part has occurred, the commissioner may impose an administrative penalty of not less than \$50 or more than \$1,000, and if the violation was committed by a state employee, the commissioner may also recommend that the employing state agency discipline the employee. The employing entity of a state employee may take disciplinary action against an employee for a violation of this part, regardless of whether the commissioner makes a recommendation for discipline. The commissioner may assess the costs of the proceeding against the person bringing the charges if the commissioner determines that a violation did not occur or against the officer or employee if the commissioner determines that a violation did occur.

(3) A party may seek judicial review of the commissioner's decision, as provided in chapter 4, part 7, of this title, after a hearing, a dismissal, or a summary decision issued pursuant to subsection (1)(b).

(4) Except for records made public in the course of a hearing held under subsection (1) and records that are open for public inspection pursuant to Montana law, a complaint and records obtained or prepared by the commissioner in connection with an investigation or complaint are confidential documents and are not open for public inspection. The complainant and the person who is the subject of the complaint shall maintain the confidentiality of the complaint and any related documents released to the parties by the commissioner until the commissioner issues a decision. However, the person who is the subject of a complaint may waive, in writing, the right of confidentiality provided in this subsection. If a waiver is filed with the commissioner, the complaint and any related documents must be open for public inspection. The commissioner's decision issued after a hearing is a public record open to inspection.

(5) When a complaint is filed, the commissioner may issue statements or respond to inquiries to confirm that a complaint has been filed, to identify against whom it has been filed, and to describe the procedural aspects and status of the case.

(6) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part.

History: En. Sec. 15, Ch. 562, L. 1995; amd. Sec. 4, Ch. 42, L. 1997; amd. Sec. 4, Ch. 122, L. 2001.

2-2-144. Enforcement for local government. (1) Except as provided in subsections (5) and (6), a person alleging a violation of this part by a local government officer or local government employee shall notify the county attorney of the county where the local government is located. The county attorney shall request from the complainant or the person who is the subject of the complaint any information necessary to make a determination concerning the validity of the complaint.

(2) If the county attorney determines that the complaint is justified, the county attorney may bring an action in district court seeking a civil fine of not less than \$50 or more than \$1,000. If the county attorney determines that the complaint alleges a criminal violation, the county attorney shall bring criminal charges against the officer or employee.

(3) If the county attorney declines to bring an action under this section, the person alleging a violation of this part may file a civil action in district court seeking a civil fine of not less than \$50 or more than \$1,000. In an action filed under this subsection, the court may assess the costs and attorney fees against the person bringing the charges if the court determines that a violation did not occur or against the officer or employee if the court determines that a violation did occur. The court may impose sanctions if the court determines that the action was frivolous or intended for harassment.

(4) The employing entity of a local government employee may take disciplinary action against an employee for a violation of this part.

(5) (a) A local government may establish a three-member panel to review complaints alleging violations of this part by officers or employees of the local government. The local government shall establish procedures and rules for the panel. The members of the panel may not be officers or employees of the local government. The panel shall review complaints and may refer to the county attorney complaints that appear to be substantiated. If the complaint is against the county attorney, the panel shall refer the matter to the commissioner of political practices and the complaint must then be processed by the commissioner pursuant to 2-2-136.

(b) In a local government that establishes a panel under this subsection (5), a complaint must be referred to the panel prior to making a complaint to the county attorney.

(6) If a local government review panel has not been established pursuant to subsection (5), a person alleging a violation of this part by a county attorney shall file the complaint with the commissioner of political practices pursuant to 2-2-136.

History: En. Sec. 21, Ch. 562, L. 1995; amd. Sec. 5, Ch. 122, L. 2001.

Part 2

Proscribed Acts Related to Contracts and Claims

2-2-201. Public officers, employees, and former employees not to have interest in contracts. (1) Members of the legislature; state, county, city, town, or township officers; or any deputies or employees of an enumerated governmental entity may not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees if they are directly involved with the contract. A former employee may not, within 6 months following the termination of employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which the former employee was directly involved during employment.

(2) In this section, the term:

(a) “be interested in” does not include holding a minority interest in a corporation;

(b) “contract” does not include:

(i) contracts awarded based on competitive procurement procedures conducted after the date of employment termination;

(ii) merchandise sold to the highest bidder at public auctions;

(iii) investments or deposits in financial institutions that are in the business of loaning or receiving money;

(iv) a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It is presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

(c) “directly involved” means the person directly monitors a contract, extends or amends a contract, audits a contractor, is responsible for conducting the procurement or for evaluating proposals or vendor responsibility, or renders legal advice concerning the contract;

(d) “former employee” does not include a person whose employment with the state was involuntarily terminated because of a reduction in force or other involuntary termination not involving violation of the provisions of this chapter.

History: En. Sec. 1020, Pol. C. 1895; re-en. Sec. 368, Rev. C. 1907; re-en. Sec. 444, R.C.M. 1921; Cal. Pol. C. Sec. 920; re-en. Sec. 444, R.C.M. 1935; amd. Sec. 1, Ch. 43, L. 1973; R.C.M. 1947, 59-501; amd. Sec. 1, Ch. 377, L. 1979; amd. Sec. 1, Ch. 458, L. 1981; amd. Sec. 1, Ch. 65, L. 1991; amd. Sec. 1, Ch. 322, L. 1993; amd. Sec. 1, Ch. 181, L. 2001.

2-2-202. Public officers not to have interest in sales or purchases. State, county, town, township, and city officers must not be purchasers at any sale or vendors at any purchase made by them in their official capacity.

History: En. Sec. 1021, Pol. C. 1895; re-en. Sec. 369, Rev. C. 1907; re-en. Sec. 445, R.C.M. 1921; Cal. Pol. C. Sec. 921; re-en. Sec. 445, R.C.M. 1935; R.C.M. 1947, 59-502.

2-2-203. Voidable contracts. Every contract made in violation of any of the provisions of 2-2-201 or 2-2-202 may be avoided at the instance of any party except the officer interested therein.

History: En. Sec. 1022, Pol. C. 1895; re-en. Sec. 370, Rev. C. 1907; re-en. Sec. 446, R.C.M. 1921; Cal. Pol. C. Sec. 922; re-en. Sec. 446, R.C.M. 1935; R.C.M. 1947, 59-503.

2-2-204. Dealings in warrants and other claims prohibited. The state officers, the several county, city, town, and township officers of this state, their deputies and clerks, are prohibited from purchasing or selling or in any manner receiving to their own use or benefit or to the use or benefit of any person or persons whatever any state, county, or city warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the state or any county, city, town, or township thereof except evidences of indebtedness issued to or held by them for services rendered as such officer, deputy, clerk, and evidences of the funded indebtedness of such state, county, city, township, town, or corporation.

History: En. Sec. 1023, Pol. C. 1895; re-en. Sec. 371, Rev. C. 1907; re-en. Sec. 447, R.C.M. 1921; Cal. Pol. C. Sec. 923; re-en. Sec. 447, R.C.M. 1935; R.C.M. 1947, 59-504.

2-2-205. Affidavit to be required by auditing officers. Each officer whose duty it is to audit and allow the accounts of other state, county, city, township, or town officers shall, before allowing the accounts, require each of the officers to make and file with the auditing officer an affidavit that the affiant has not violated any of the provisions of this part.

History: En. Sec. 1024, Pol. C. 1895; re-en. Sec. 372, Rev. C. 1907; re-en. Sec. 448, R.C.M. 1921; Cal. Pol. C. Sec. 924; re-en. Sec. 448, R.C.M. 1935; R.C.M. 1947, 59-505; amd. Sec. 35, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-2-206. Officers not to pay illegal warrant. Officers charged with the disbursement of public moneys must not pay any warrant or other evidence of indebtedness against the state, county, city, town, or township when the same has been purchased, sold, received, or transferred contrary to any of the provisions of this part.

History: En. Sec. 1025, Pol. C. 1895; re-en. Sec. 373, Rev. C. 1907; re-en. Sec. 449, R.C.M. 1921; Cal. Pol. C. Sec. 925; re-en. Sec. 449, R.C.M. 1935; R.C.M. 1947, 59-506.

2-2-207. Settlements to be withheld on affidavit. (1) Each officer charged with the disbursement of public money who is informed by affidavit establishing probable cause that an officer whose account is about to be settled, audited, or paid has violated any of the provisions of this part shall suspend the settlement or payment and cause the officer to be prosecuted for the violation by the county attorney.

(2) If there is a judgment for the defendant upon prosecution, the proper officer may proceed to settle, audit, or pay the account as if an affidavit had not been filed.

History: En. Sec. 1026, Pol. C. 1895; re-en. Sec. 374, Rev. C. 1907; re-en. Sec. 450, R.C.M. 1921; Cal. Pol. C. Sec. 926; re-en. Sec. 450, R.C.M. 1935; R.C.M. 1947, 59-507; amd. Sec. 36, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

Part 3 Nepotism

2-2-301. Nepotism defined. Nepotism is the bestowal of political patronage by reason of relationship rather than of merit.

History: En. Sec. 1, Ch. 12, L. 1933; re-en. Sec. 456.1, R.C.M. 1935; R.C.M. 1947, 59-518.

2-2-302. Appointment of relative to office of trust or emolument unlawful — exceptions — publication of notice. (1) Except as provided in subsection (2), it is unlawful for a person or member of any board, bureau, or commission or employee at the head of a department of this state or any political subdivision of this state to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree or by affinity within the second degree.

(2) The provisions of 2-2-303 and this section do not apply to:

- (a) a sheriff in the appointment of a person as a cook or an attendant;
- (b) school district trustees if all the trustees, with the exception of any trustee who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a trustee;

(c) a school district in the employment of a person as a substitute teacher who is not employed as a substitute teacher for more than 30 consecutive school days as defined by the trustees in 20-1-302;

(d) the renewal of an employment contract of a person who was initially hired before the member of the board, bureau, or commission or the department head to whom the person is related assumed the duties of the office;

(e) the employment of election judges;

(f) the employment of pages or temporary session staff by the legislature; or

(g) county commissioners of a county with a population of less than 10,000 if all the commissioners, with the exception of any commissioner who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a commissioner.

(3) Prior to the appointment of a person referred to in subsection (2)(b) or (2)(g), written notice of the time and place for the intended action must be published at least 15 days prior to the intended action in a newspaper of general circulation in the county in which the school district is located or the county office or position is located.

History: En. Sec. 2, Ch. 12, L. 1933; re-en. Sec. 456.2, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1955; amd. Sec. 27, Ch. 535, L. 1975; R.C.M. 1947, 59-519(part); amd. Sec. 1, Ch. 117, L. 1987; amd. Sec. 1, Ch. 55, L. 1991; amd. Sec. 1, Ch. 238, L. 1991; amd. Sec. 10, Ch. 562, L. 1995; amd. Sec. 1, Ch. 138, L. 2005; amd. Sec. 1, Ch. 316, L. 2005.

2-2-303. Agreements to appoint relative to office unlawful. It shall further be unlawful for any person or any member of any board, bureau, or commission or employee of any department of this state or any political subdivision thereof to enter into any agreement or any promise with other persons or any members of any boards, bureaus, or commissions or employees of any department of this state or any of its political subdivisions thereof to appoint to any position of trust or emolument any person or persons related to them or connected with them by consanguinity within the fourth degree or by affinity within the second degree.

History: En. Sec. 2, Ch. 12, L. 1933; re-en. Sec. 456.2, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1955; amd. Sec. 27, Ch. 535, L. 1975; R.C.M. 1947, 59-519(part).

2-2-304. Penalty for violation of nepotism law. A public officer or employee or a member of any board, bureau, or commission of this state or any political subdivision who, by virtue of the person's office, has the right to make or appoint any person to render services to this state or any subdivision of this state and who makes or appoints a person to the services or enters into any agreement or promise with any other person or employee or any member of any board, bureau, or commission of any other department of this state or any of its subdivisions to appoint to any position any person or persons related to the person making the appointment or connected with the person making the appointment by consanguinity within the fourth degree or by affinity within the second degree is guilty of a misdemeanor and upon conviction shall be punished by a fine not less than \$50 or more than \$1,000, by imprisonment in the county jail for not more than 6 months, or both.

History: En. Sec. 3, Ch. 12, L. 1933; re-en. Sec. 456.3, R.C.M. 1935; R.C.M. 1947, 59-520; amd. Sec. 1, Ch. 253, L. 1989; amd. Sec. 37, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

CHAPTER 3 PUBLIC PARTICIPATION IN GOVERNMENTAL OPERATIONS

Part 1 Notice and Opportunity to Be Heard

2-3-101. Legislative intent. The legislature finds and declares pursuant to the mandate of Article II, section 8, of the 1972 Montana constitution that legislative guidelines should be established to secure to the people of Montana their constitutional right to be afforded reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency.

History: En. 82-4226 by Sec. 1, Ch. 491, L. 1975; R.C.M. 1947, 82-4226.

2-3-102. Definitions. As used in this part, the following definitions apply:

(1) “Agency” means any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, determine contested cases, or enter into contracts except:

- (a) the legislature and any branch, committee, or officer thereof;
- (b) the judicial branches and any committee or officer thereof;
- (c) the governor, except that an agency is not exempt because the governor has been designated as a member thereof; or
- (d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.

(2) “Agency action” means the whole or a part of the adoption of an agency rule, the issuance of a license or order, the award of a contract, or the equivalent or denial thereof.

(3) “Rule” means any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include:

- (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or
- (b) declaratory rulings as to the applicability of any statutory provision or of any rule.

History: En. 82-4227 by Sec. 2, Ch. 491, L. 1975; amd. Sec. 23, Ch. 285, L. 1977; amd. Sec. 1, Ch. 452, L. 1977; R.C.M. 1947, 82-4227(part); amd. Sec. 1, Ch. 243, L. 1979.

2-3-103. Public participation — governor to ensure guidelines adopted. (1) (a) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures must ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public. The agenda for a meeting, as defined in 2-3-202, must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting. However, the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter. Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in 2-3-212.

(b) For purposes of this section, “public matter” does not include contested case and other adjudicative proceedings.

(2) The governor shall ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state adopts coordinated rules for its programs. The guidelines must provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1). These guidelines must be adopted as rules and published in a manner so that the rules may be provided to a member of the public upon request.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(1), (5); amd. Sec. 1, Ch. 425, L. 2003.

2-3-104. Requirements for compliance with notice provisions. An agency shall be considered to have complied with the notice provisions of 2-3-103 if:

- (1) an environmental impact statement is prepared and distributed as required by the Montana Environmental Policy Act, Title 75, chapter 1;
- (2) a proceeding is held as required by the Montana Administrative Procedure Act;
- (3) a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or resolution; or
- (4) a newspaper of general circulation within the area to be affected by a decision of significant interest to the public has carried a news story or advertisement concerning the decision sufficiently prior to a final decision to permit public comment on the matter.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(2).

2-3-105. Supplemental notice by radio or television. (1) An official of the state or any of its political subdivisions who is required by law to publish a notice required by law may

supplement the publication by a radio or television broadcast of a summary of the notice or by both when in the official's judgment the public interest will be served.

(2) The summary of the notice must be read without a reference to any person by name who is then a candidate for political office.

(3) The announcements may be made only by duly employed personnel of the station from which the broadcast emanates.

(4) Announcements by political subdivisions may be made only by stations situated within the county of origin of the legal notice unless a broadcast station does not exist in that county, in which case announcements may be made by a station or stations situated in any county other than the county of origin of the legal notice.

History: En. Sec. 1, Ch. 149, L. 1963; R.C.M. 1947, 19-201; amd. Sec. 38, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-3-106. Period for which copy retained. Each radio or television station broadcasting any summary of a legal notice shall for a period of 6 months subsequent to such broadcast retain at its office a copy or transcription of the text of the summary as actually broadcast, which shall be available for public inspection.

History: En. Sec. 2, Ch. 149, L. 1963; R.C.M. 1947, 19-202.

2-3-107. Proof of publication by broadcast. Proof of publication of a summary of any notice by radio or television broadcast shall be by affidavit of the manager, an assistant manager, or a program director of the radio or television station broadcasting the same.

History: En. Sec. 3, Ch. 149, L. 1963; R.C.M. 1947, 19-203.

2-3-108 through 2-3-110 reserved.

2-3-111. Opportunity to submit views — public hearings. (1) Procedures for assisting public participation must include a method of affording interested persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public.

(2) When a state agency other than the board of regents proposes to take an action that directly impacts a specific community or area and a public hearing is held, the hearing must be held in an accessible facility in the impacted community or area or in the nearest community or area with an accessible facility.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(3); amd. Sec. 1, Ch. 487, L. 1997.

2-3-112. Exceptions. The provisions of 2-3-103 and 2-3-111 do not apply to:

(1) an agency decision that must be made to deal with an emergency situation affecting the public health, welfare, or safety;

(2) an agency decision that must be made to maintain or protect the interests of the agency, including but not limited to the filing of a lawsuit in a court of law or becoming a party to an administrative proceeding; or

(3) a decision involving no more than a ministerial act.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(4).

2-3-113. Declaratory rulings to be published. The declaratory rulings of any board, bureau, commission, department, authority, agency, or officer of the state which is not subject to the Montana Administrative Procedure Act shall be published and be subject to judicial review as provided under 2-4-623(6) and 2-4-501, respectively.

History: En. 82-4227 by Sec. 2, Ch. 491, L. 1975; amd. Sec. 23, Ch. 285, L. 1977; amd. Sec. 1, Ch. 452, L. 1977; R.C.M. 1947, 82-4227(part); amd. Sec. 3, Ch. 184, L. 1979.

2-3-114. Enforcement. The district courts of the state have jurisdiction to set aside an agency decision under this part upon petition of any person whose rights have been prejudiced. A petition pursuant to this section must be filed within 30 days of the date on which the petitioner learns, or reasonably should have learned, of the agency's decision.

History: En. 82-4229 by Sec. 4, Ch. 491, L. 1975; amd. Sec. 25, Ch. 285, L. 1977; R.C.M. 1947, 82-4229; amd. Sec. 1, Ch. 211, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 211 near middle of first sentence after “petition” deleted “made within 30 days of the date of the decision” and inserted second sentence requiring filing of a petition within 30 days of the date the petitioner learns or reasonably should have learned of the agency’s decision. Amendment effective October 1, 2007.

Part 2 Open Meetings

2-3-201. Legislative intent — liberal construction. The legislature finds and declares that public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the peoples’ business. It is the intent of this part that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of the part shall be liberally construed.

History: En. Sec. 1, Ch. 159, L. 1963; R.C.M. 1947, 82-3401.

2-3-202. Meeting defined. As used in this part, “meeting” means the convening of a quorum of the constituent membership of a public agency or association described in 2-3-203, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.

History: En. 82-3404 by Sec. 2, Ch. 567, L. 1977; R.C.M. 1947, 82-3404; amd. Sec. 2, Ch. 183, L. 1987.

2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public — exceptions. (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.

(2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.

(3) The presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.

(4) (a) Except as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency.

(b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only parties are public bodies or associations described in subsections (1) and (2).

(5) The supreme court may close a meeting that involves judicial deliberations in an adversarial proceeding.

(6) Any committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business that is within the jurisdiction of that agency is subject to the requirements of this section.

History: En. Sec. 2, Ch. 159, L. 1963; amd. Sec. 1, Ch. 474, L. 1975; amd. Sec. 1, Ch. 567, L. 1977; R.C.M. 1947, 82-3402; amd. Sec. 1, Ch. 380, L. 1979; amd. Sec. 1, Ch. 183, L. 1987; amd. Sec. 1, Ch. 123, L. 1993; amd. Sec. 1, Ch. 218, L. 2005.

2-3-204 through 2-3-210 reserved.

2-3-211. Recording. Accredited press representatives may not be excluded from any open meeting under this part and may not be prohibited from taking photographs, televising, or recording such meetings. The presiding officer may assure that such activities do not interfere with the conduct of the meeting.

History: En. 82-3405 by Sec. 4, Ch. 567, L. 1977; R.C.M. 1947, 82-3405.

2-3-212. Minutes of meetings — public inspection. (1) Appropriate minutes of all meetings required by 2-3-203 to be open shall be kept and shall be available for inspection by the public.

(2) Such minutes shall include without limitation:

- (a) date, time, and place of meeting;
 - (b) a list of the individual members of the public body, agency, or organization in attendance;
 - (c) the substance of all matters proposed, discussed, or decided; and
 - (d) at the request of any member, a record by individual members of any votes taken.
- History:** En. Sec. 3, Ch. 159, L. 1963; amd. Sec. 3, Ch. 567, L. 1977; R.C.M. 1947, 82-3403.

2-3-213. Voidability. Any decision made in violation of 2-3-203 may be declared void by a district court having jurisdiction. A suit to void a decision must be commenced within 30 days of the date on which the plaintiff or petitioner learns, or reasonably should have learned, of the agency's decision.

History: En. 82-3406 by Sec. 5, Ch. 567, L. 1977; R.C.M. 1947, 82-3406; amd. Sec. 2, Ch. 211, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 211 at end of second sentence after "days of the" inserted "date on which the plaintiff or petitioner learns, or reasonably should have learned, of the agency's"; and made minor changes in style. Amendment effective October 1, 2007.

2-3-214 through 2-3-220 reserved.

2-3-221. Costs to plaintiff in certain actions to enforce constitutional right to know. A plaintiff who prevails in an action brought in district court to enforce the plaintiff's rights under Article II, section 9, of the Montana constitution may be awarded costs and reasonable attorney fees.

History: En. 93-8632 by Sec. 1, Ch. 493, L. 1975; R.C.M. 1947, 93-8632; amd. Sec. 39, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

Part 3 Use of Electronic Mail Systems

2-3-301. Agency to accept public comment electronically — dissemination of electronic mail address and documents required — prohibiting fees. (1) An agency that accepts public comment pursuant to a statute, administrative rule, or policy, including an agency adopting rules pursuant to the Montana Administrative Procedure Act or an agency to which 2-3-111 applies, shall provide for the receipt of public comment by the agency by use of an electronic mail system.

(2) As part of the agency action required by subsection (1), an agency shall disseminate by appropriate media its electronic mail address to which public comment may be made, including dissemination in:

- (a) rulemaking notices published pursuant to the Montana Administrative Procedure Act;
- (b) the telephone directory of state agencies published by the department of administration;
- (c) any notice of agency existence, purpose, and operations published on the internet world wide web, popularly known as a "website", used by the agency; or
- (d) any combination of the methods of dissemination provided in subsections (2)(a) through (2)(c).

(3) An agency shall, at the request of another agency or person and subject to 2-6-102, disseminate the electronic documents to that agency or person by electronic mail in place of surface mail. An agency may not charge a fee for providing documents by electronic mail in accordance with this subsection.

(4) An agency that receives electronic mail pursuant to subsection (1) shall retain the electronic mail as either an electronic or a paper copy to the same extent that other comments are retained.

(5) As used in this section, "agency" means a department, division, bureau, office, board, commission, authority, or other agency of the executive branch of state government.

History: En. Sec. 1, Ch. 484, L. 1999; amd. Sec. 1, Ch. 77, L. 2001; amd. Sec. 19, Ch. 313, L. 2001.

CHAPTER 4 ADMINISTRATIVE PROCEDURE ACT

Part 1 General Provisions

2-4-101. Short title. This chapter shall be known and may be cited as the “Montana Administrative Procedure Act”.

History: En. Sec. 1, Ch. 2, Ex. L. 1971; amd. Sec. 1, Ch. 285, L. 1977; R.C.M. 1947, 82-4201.

2-4-102. Definitions. For purposes of this chapter, the following definitions apply:

(1) “Administrative rule review committee” or “committee” means the appropriate committee assigned subject matter jurisdiction in Title 5, chapter 5, part 2.

(2) (a) “Agency” means an agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ARM and the register;

(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works;

(v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252 and 69-3-837.

(b) Agency does not include a school district, unit of local government, or any other political subdivision of the state.

(3) “ARM” means the Administrative Rules of Montana.

(4) “Contested case” means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) (a) “Interested person” means a person who has expressed to the agency an interest concerning agency actions under this chapter and has requested to be placed on the agency’s list of interested persons as to matters of which the person desires to be given notice.

(b) The term does not extend to contested cases.

(6) “License” includes the whole or part of an agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(7) “Licensing” includes an agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(8) “Party” means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but this chapter may not be construed to prevent an agency from admitting any person as a party for limited purposes.

(9) “Person” means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(10) “Register” means the Montana Administrative Register.

(11) (a) “Rule” means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule.

(b) The term does not include:

(i) statements concerning only the internal management of an agency or state government and not affecting private rights or procedures available to the public, including rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(ii) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(iii) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(iv) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals; or

(v) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the ARM.

(12) (a) “Significant interest to the public” means agency actions under this chapter regarding matters that the agency knows to be of widespread citizen interest. These matters include issues involving a substantial fiscal impact to or controversy involving a particular class or group of individuals.

(b) The term does not extend to contested cases.

(13) “Substantive rules” are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law.

History: (1), (3), (9)En. by Code Commissioner, 1979; (2), (4) thru (8), (10), (11)En. Sec. 2, Ch. 2, Ex. L. 1971; amd. Sec. 2, Ch. 285, L. 1977; Sec. 82-4202, R.C.M. 1947; R.C.M. 1947, 82-4202; amd. Sec. 4, Ch. 184, L. 1979; amd. Sec. 2, Ch. 243, L. 1979; amd. Sec. 1, Ch. 671, L. 1985; amd. Sec. 1, Ch. 340, L. 1991; amd. Sec. 6, Ch. 546, L. 1995; amd. Sec. 28, Ch. 349, L. 1997; amd. Sec. 1, Ch. 489, L. 1997; amd. Sec. 1, Ch. 19, L. 1999; amd. Sec. 1, Ch. 181, L. 2003.

2-4-103. Rules and statements to be made available to public. (1) Each agency shall:

(a) make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions;

(b) upon request of any person, provide a copy of any rule.

(2) Unless otherwise provided by statute, an agency may require the payment of the cost of providing such copies.

(3) No agency rule is valid or effective against any person or party whose rights have been substantially prejudiced by an agency’s failure to comply with the public inspection requirement herein.

History: En. Sec. 3, Ch. 2, Ex. L. 1971; amd. Sec. 1, Ch. 240, L. 1974; amd. Sec. 3, Ch. 285, L. 1977; R.C.M. 1947, 82-4203(1)(c), (1)(d), (2); amd. Sec. 3, Ch. 243, L. 1979.

2-4-104. Subpoenas and enforcement — compelling testimony. (1) An agency conducting any proceeding subject to this chapter may require the furnishing of information, the attendance of witnesses, and the production of books, records, papers, documents, and other objects that may be necessary and proper for the purposes of the proceeding. In furtherance of this power, an agency upon its own motion may and, upon request of any party appearing in a contested case, shall issue subpoenas for witnesses or subpoenas duces tecum. The method for service of subpoenas, witness fees, and mileage must be the same as required in civil actions in the district courts of the state. Except as otherwise provided by statute, witness fees and mileage must be paid by the party at whose request the subpoena was issued.

(2) In case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which the witness may be interrogated in a proceeding before the agency, the agency may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. If the agency fails or refuses to seek enforcement of a subpoena issued at the request of a party or to compel the giving of testimony considered material by a party, the party may make an application to the district court. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order must be punishable by contempt of court in the same manner and by the same procedures as is provided for similar conduct committed in the course of civil actions in district courts. If another method of subpoena enforcement or compelling

testimony is provided by statute, it may be used as an alternative to the method provided for in this section.

History: En. Sec. 20, Ch. 2, Ex. L. 1971; amd. Sec. 19, Ch. 285, L. 1977; R.C.M. 1947, 82-4220(1), (2); amd. Sec. 40, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-4-105. Representation by counsel. Any person compelled to appear in person or who voluntarily appears before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel. In a proceeding before an agency, every party shall be accorded the right to appear in person or by or with counsel but this chapter shall not be construed as requiring an agency to furnish counsel to any such person.

History: En. Sec. 21, Ch. 2, Ex. L. 1971; amd. Sec. 20, Ch. 285, L. 1977; R.C.M. 1947, 82-4221.

2-4-106. Service. Except where a statute expressly provides to the contrary, service in all agency proceedings subject to the provisions of this chapter and in proceedings for judicial review thereof shall be as prescribed for civil actions in the district courts.

History: En. Sec. 22, Ch. 2, Ex. L. 1971; amd. Sec. 21, Ch. 285, L. 1977; R.C.M. 1947, 82-4222.

2-4-107. Construction and effect. Nothing in this chapter shall be considered to limit or repeal requirements imposed by statute or otherwise recognized law. No subsequent legislation shall be considered to supersede or modify any provision of this chapter, whether by implication or otherwise, except to the extent that such legislation shall do so expressly.

History: En. Sec. 23, Ch. 2, Ex. L. 1971; amd. Sec. 22, Ch. 285, L. 1977; R.C.M. 1947, 82-4223.

2-4-108 and 2-4-109 reserved.

2-4-110. Departmental review of rule notices. (1) The head of each department of the executive branch shall appoint an existing attorney, paralegal, or other qualified person from that department to review each departmental rule proposal notice, adoption notice, or other notice relating to administrative rulemaking. Notice of the name of the person appointed under this subsection and of any successor must be given to the secretary of state and the appropriate administrative rule review committee within 10 days of the appointment.

(2) The person appointed under subsection (1) shall review each notice by any division, bureau, or other unit of the department, including units attached to the department for administrative purposes only under 2-15-121, for compliance with this chapter before the notice is filed with the secretary of state. The reviewer shall pay particular attention to 2-4-302 and 2-4-305. The review must include but is not limited to consideration of:

(a) the adequacy of the statement of reasonable necessity for the intended action and whether the intended action is reasonably necessary to effectuate the purpose of the code section or sections implemented;

(b) whether the proper statutory authority for the rule is cited;

(c) whether the citation of the code section or sections implemented is correct; and

(d) whether the intended action is contrary to the code section or sections implemented or to other law.

(3) The person appointed under subsection (1) shall sign each notice for which this section requires a review. The act of signing is an affirmation that the review required by this section has been performed to the best of the reviewer's ability. The secretary of state may not accept for filing a notice that does not have the signature required by this section.

History: En. Sec. 1, Ch. 8, L. 1987; amd. Sec. 1, Ch. 3, L. 1991; amd. Sec. 2, Ch. 19, L. 1999; amd. Sec. 1, Ch. 210, L. 2001.

Part 3

Adoption and Publication of Rules

2-4-302. Notice, hearing, and submission of views. (1) (a) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its proposed action. The proposal notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the reasonable necessity for the proposed action, and the time when, place where, and manner in which interested persons may present

their views on the proposed action. The reasonable necessity must be written in plain, easily understood language.

(b) The agency shall state in the proposal notice the date on which and the manner in which notification was given to the primary sponsor as required in subsection (2)(d). If the notification to the primary sponsor was given by mail, the date stated in the proposal notice must be the date on which the notification was mailed by the agency. If the proposal notice fails to state the date on which and the manner in which the primary sponsor was notified, the filing of the proposal notice under subsection (2)(a) is ineffective for the purposes of this part and for the purposes of the law that the agency cites in the proposal notice as the authority for the proposed action.

(c) If the agency proposes to adopt, increase, or decrease a monetary amount that a person shall pay or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:

(i) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and

(ii) the number of persons affected.

(2) (a) The proposal notice must be filed with the secretary of state for publication in the register, as provided in 2-4-312. Within 3 days of publication, a copy of the published proposal notice must be sent to interested persons who have made timely requests to the agency to be informed of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or organization or member of those entities who has filed a request with the appropriate administrative rule review committee when the request has been forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of interested persons and the subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing in regard to proposed agency action under this part must be informed of the list by the agency. An agency complies with this subsection if it includes in the proposal notice an advisement explaining how persons may be placed on the list of interested persons and if it complies with subsection (7).

(b) The appropriate administrative rule review committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to the agencies that the committee oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(c) The proposal notice required by subsection (1) must be published at least 30 days in advance of the agency's proposed action. The agency shall post the proposal notice on a state electronic access system or other electronic communications system available to the public.

(d) (i) When an agency begins to work on the substantive content and the wording of a proposal notice for a rule that initially implements legislation, the agency shall notify the legislator who was the primary sponsor of the legislation. If the legislation affected more than one program, notice must be given to the primary sponsor pursuant to this subsection (2)(d) each time that a rule is being proposed to initially implement the legislation for a program.

(ii) Within 3 days after a proposal notice covered under subsection (2)(d)(i) has been published as required in subsection (2)(a), a copy of the published notice must be sent to the primary sponsor notified under subsection (2)(d)(i).

(3) If a statute provides for a method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained in this section. However, the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views, or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the appropriate administrative rule review committee, or by an association having not less than

25 members who will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing in this section alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of a hearing on the intended action, the person designated by the agency to preside at the hearing shall:

(a) read aloud the “Notice of Function of Administrative Rule Review Committee” appearing in the register; and

(b) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an opportunity to place their names on the list.

(8) For purposes of notifying primary sponsors under subsections (2)(a) and (2)(d) who are no longer members of the legislature, a former legislator who wishes to receive notice may keep the former legislator’s name, address, e-mail address, and telephone number on file with the secretary of state. An agency proposing rules shall consult the register when providing sponsor notice.

History: En. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; R.C.M. 1947, 82-4204(part); amd. Sec. 4, Ch. 243, L. 1979; amd. Sec. 1, Ch. 381, L. 1981; amd. Sec. 1, Ch. 429, L. 1983; amd. Sec. 1, Ch. 152, L. 1997; amd. Sec. 1, Ch. 340, L. 1997; amd. Sec. 2, Ch. 489, L. 1997; amd. Sec. 3, Ch. 19, L. 1999; amd. Sec. 1, Ch. 41, L. 1999; amd. Sec. 2, Ch. 210, L. 2001; amd. Sec. 2, Ch. 88, L. 2007; amd. Sec. 1, Ch. 207, L. 2007; amd. Sec. 2, Ch. 394, L. 2007.

Compiler’s Comments

2007 Amendments — Composite Section — Coordination: Chapter 88 in (2)(a) near beginning and in (2)(c) in two places substituted requirement that notices be sent for requirement that notices be mailed (amendment rendered void by Ch. 394 amendment); in (8) in first sentence inserted “e-mail address”; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 207 in (2)(a) near beginning of first sentence after “publication to the” inserted “primary” and after “enacted the” substituted “statute or amendment to the statute” for “section” (amendment rendered void by Ch. 394 amendment); in (2)(d) in first sentence after “implement” substituted “a statute or an amendment to a statute” for “one or more statutes” (amendment rendered void by Ch. 394 amendment), after “notify the” inserted “primary” (amendment rendered void by Ch. 394 amendment), and after “enacted the” substituted “statute or amendment to a statute” for “section” (amendment rendered void by Ch. 394 amendment) and inserted second sentence requiring notification of the primary sponsor if an agency intends to propose initial rules for more than one program (pursuant to sec. 2, Ch. 394, L. 2007, a coordination section, the code commissioner has not codified the amendment made by Ch. 207 because the purpose of the amendment is the same as the amendment made by Ch. 394, although worded differently); and in (8) near beginning of first sentence after “notifying” inserted “primary”. Amendment effective October 1, 2007.

Chapter 394 in (1)(a) in three places substituted “proposed action” for “intended action” and in second sentence near beginning after “The” inserted “proposal”; inserted (1)(b) relating to date and manner of primary sponsor notice; in (2)(a) in first sentence at beginning after “The” inserted “proposal”, in second sentence near beginning after “publication” substituted “a copy of the published proposal notice must be sent” for “to the sponsor of the legislative bill that enacted the section that is cited as implemented in the notice if the notice is the initial proposal to implement the section”, and in fifth sentence near middle before “notice” inserted “proposal”; in (2)(c) at beginning of first sentence and second sentence before “notice” inserted “proposal”, in first sentence deleted reference to subsection (2)(a), after “published” deleted “and mailed”, and substituted “proposed” for “intended”, and at beginning of second sentence deleted “In addition to publishing and mailing the notice under subsection (2)(a)”; in (2)(d)(i) in first sentence at beginning substituted “When an agency begins” for “The agency shall also, at the time that its personnel begin”, after “wording of” deleted “the initial rule”, and at end substituted “notice for a rule that initially implements legislation, the agency shall notify the legislator who was the primary sponsor of the legislation” for “to implement one or more statutes, notify the sponsor of the legislative bill that enacted the section” and inserted second sentence concerning legislation affecting more than one program; inserted (2)(d)(ii) concerning time for sending published notice to primary sponsor; in (8) in first sentence before “sponsors” inserted “primary”; and made minor changes in style. Amendment effective May 3, 2007.

The amendments to this section made by sec. 1, Ch. 394, L. 2007, were rendered void by sec. 2, Ch. 394, L. 2007, a coordination section.

Applicability: Section 4, Ch. 394, L. 2007, provided: “[This act] applies to notices of proposed rulemaking filed with the secretary of state on or after [the effective date of this act].” Effective May 3, 2007.

Part 5

Judicial Notice and Declaratory Rulings

2-4-501. Declaratory rulings by agencies. Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. A copy of a declaratory ruling must be filed with the secretary of state for publication in the register. A declaratory ruling or the refusal to issue such a ruling shall be subject to judicial review in the same manner as decisions or orders in contested cases.

History: En. Sec. 18, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4218; amd. Sec. 13, Ch. 243, L. 1979.

2-4-502 through 2-4-504 reserved.

2-4-505. Judicial notice of rules. The courts shall take judicial notice of any rule filed and published under the provisions of this chapter.

History: En. Sec. 8, Ch. 2, Ex. L. 1971; amd. Sec. 13, Ch. 285, L. 1977; R.C.M. 1947, 82-4208.

2-4-506. Declaratory judgments on validity or application of rules. (1) A rule may be declared invalid or inapplicable in an action for declaratory judgment if it is found that the rule or its threatened application interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the plaintiff.

(2) A rule may also be declared invalid in the action on the grounds that the rule was adopted with an arbitrary or capricious disregard for the purpose of the authorizing statute as evidenced by documented legislative intent.

(3) A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

(4) The action may be brought in the district court for the county in which the plaintiff resides or has a principal place of business or in which the agency maintains its principal office. The agency must be made a party to the action.

History: En. Sec. 19, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 560, L. 1977; R.C.M. 1947, 82-4219; amd. Sec. 14, Ch. 243, L. 1979; amd. Sec. 2, Ch. 589, L. 1983; amd. Sec. 42, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

Part 6

Contested Cases

2-4-601. Notice. (1) In a contested case, all parties must be afforded an opportunity for hearing after reasonable notice.

(2) The notice must include:

(a) a statement of the time, place, and nature of the hearing;

(b) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(c) a reference to the particular sections of the statutes and rules involved;

(d) a short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement must be furnished.

(e) a statement that a formal proceeding may be waived pursuant to 2-4-603.

History: En. Sec. 9, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4209(1), (2); amd. Sec. 1, Ch. 277, L. 1979.

2-4-602. Discovery. Each agency shall provide in its rules of practice for discovery prior to a contested case hearing.

History: En. Sec. 19, Ch. 285, L. 1977; R.C.M. 1947, 82-4220(3).

2-4-603. Informal disposition and hearings — waiver of administrative proceedings — recording and use of settlement proceeds. (1) (a) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default. A stipulation, agreed settlement, consent order, or default that disposes of a contested case must be in writing.

(b) Unless otherwise provided by law, if a stipulation, agreed settlement, consent order, or default results in a monetary settlement involving an agency or the state, settlement proceeds

must be deposited in the account or fund in which the penalty, fine, or other payment would be deposited if the contested case had proceeded to final decision. If there is no account or fund designated for the fine, penalty, or payment in the type of action, then the settlement must be deposited in the general fund.

(c) If a stipulation, agreed settlement, consent order, or default results in a nonmonetary settlement involving an agency or the state, settlement proceeds, whether received by the state or a third party, must be recorded in a nonstate, nonfederal state special revenue account established pursuant to 17-2-102(1)(b)(i) for the purpose of recording nonmonetary settlements.

(2) Except as otherwise provided, parties to a contested case may jointly waive in writing a formal proceeding under this part. The parties may then use informal proceedings under 2-4-604. Parties to contested case proceedings held under Title 37 or under any other provision relating to licensure to pursue a profession or occupation may not waive formal proceedings.

(3) If a contested case does not involve a disputed issue of material fact, parties may jointly stipulate in writing to waive contested case proceedings and may directly petition the district court for judicial review pursuant to 2-4-702. The petition must contain an agreed statement of facts and a statement of the legal issues or contentions of the parties upon which the court, together with the additions it may consider necessary to fully present the issues, may make its decision.

History: En. Sec. 9, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4209(4); amd. Sec. 2, Ch. 277, L. 1979; amd. Sec. 1, Ch. 451, L. 1999; amd. Sec. 1, Ch. 305, L. 2001; amd. Sec. 1, Ch. 347, L. 2005.

2-4-604. Informal proceedings. (1) In proceedings under this section, the agency shall, in accordance with procedures adopted under 2-4-201:

(a) give affected persons or parties or their counsel an opportunity, at a convenient time and place, to present to the agency or hearing examiner:

(i) written or oral evidence in opposition to the agency's action or refusal to act;

(ii) a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction; or

(iii) other written or oral evidence relating to the contested case;

(b) if the objections of the persons or parties are overruled, provide a written explanation within 7 days.

(2) The record must consist of:

(a) the notice and summary of grounds of the opposition;

(b) evidence offered or considered;

(c) any objections and rulings on the objections;

(d) all matters placed on the record after ex parte communication pursuant to 2-4-613;

(e) a recording of any hearing held, together with a statement of the substance of the evidence received or considered, the written or oral statements of the parties or other persons, and the proceedings. A party may object in writing to the statement or may order at that party's cost a transcription of the recording, or both. Objections become a part of the record.

(3) Agencies shall give effect to the rules of privilege recognized by law.

(4) In agency proceedings under this section, irrelevant, immaterial, or unduly repetitious evidence must be excluded but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether or not the evidence is admissible in a trial in the courts of Montana. Any part of the evidence may be received in written form, and all testimony of parties and witnesses must be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it is not sufficient in itself to support a finding unless it is admissible over objection in civil actions.

(5) A party may petition for review of an informal agency decision pursuant to part 7 of this chapter.

History: En. Sec. 3, Ch. 277, L. 1979; amd. Sec. 43, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-4-605 through 2-4-610 reserved.

2-4-611. Hearing examiners — legal services unit — conduct of hearings — disqualification of hearing examiners and agency members. (1) An agency may appoint

hearing examiners for the conduct of hearings in contested cases. A hearing examiner must be assigned with due regard to the expertise required for the particular matter.

(2) An agency may elect to request a hearing examiner from an agency legal assistance program, if any, within the attorney general's office or from another agency. If the request is honored, the time, date, and place of the hearing must be set by the agency, with the concurrence of the legal assistance program or the other agency.

(3) Agency members or hearing examiners presiding over hearings may administer oaths or affirmations; issue subpoenas pursuant to 2-4-104; provide for the taking of testimony by deposition; regulate the course of hearings, including setting the time and place for continued hearings and fixing the time for filing of briefs or other documents; and direct parties to appear and confer to consider simplification of the issues by consent of the parties.

(4) On the filing by a party, hearing examiner, or agency member in good faith of a timely and sufficient affidavit of personal bias, lack of independence, disqualification by law, or other disqualification of a hearing examiner or agency member, the agency shall determine the matter as a part of the record and decision in the case. The agency may disqualify the hearing examiner or agency member and request another hearing examiner pursuant to subsection (2) or assign another hearing examiner from within the agency. The affidavit must state the facts and the reasons for the belief that the hearing examiner should be disqualified and must be filed not less than 10 days before the original date set for the hearing.

History: En. Sec. 11, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4211(part); amd. Sec. 1, Ch. 467, L. 1979; amd. Sec. 2, Ch. 3, L. 1985.

2-4-612. Hearing — rules of evidence, cross-examination, judicial notice. (1) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(2) Except as otherwise provided by statute relating directly to an agency, agencies shall be bound by common law and statutory rules of evidence. Objections to evidentiary offers may be made and shall be noted in the record. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(3) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(4) All testimony shall be given under oath or affirmation.

(5) A party shall have the right to conduct cross-examinations required for a full and true disclosure of facts, including the right to cross-examine the author of any document prepared by or on behalf of or for the use of the agency and offered in evidence.

(6) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed, including any staff memoranda or data. They shall be afforded an opportunity to contest the material so noticed.

(7) The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence.

History: En. Secs. 9, 10, 11, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4209(3), 82-4210, 82-4211(part).

2-4-613. Ex parte consultations. Unless required for disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or to make findings of fact and conclusions of law in a contested case, after issuance of notice of hearing, may not communicate with any party or a party's representative in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate.

History: En. Sec. 14, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4214; amd. Sec. 44, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-4-614. Record — transcription. (1) The record in a contested case must include:

(a) all pleadings, motions, and intermediate rulings;

- (b) all evidence received or considered, including a stenographic record of oral proceedings when demanded by a party;
- (c) a statement of matters officially noticed;
- (d) questions and offers of proof, objections, and rulings on those objections;
- (e) proposed findings and exceptions;
- (f) any decision, opinion, or report by the hearings examiner or agency member presiding at the hearing, which must be in writing;
- (g) all staff memoranda or data submitted to the hearings examiner or members of the agency as evidence in connection with their consideration of the case.

(2) The stenographic record of oral proceedings or any part of the stenographic record must be transcribed on request of any party. Unless otherwise provided by statute, the cost of the transcription must be paid by the requesting party.

History: En. Sec. 9, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4209(5), (6); amd. Sec. 2, Ch. 347, L. 2005.

2-4-615 through 2-4-620 reserved.

2-4-621. When absent members render decision — proposal for decision and opportunity to submit findings and conclusions — modification by agency. (1) When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case, the decision, if adverse to a party to the proceeding other than the agency itself, may not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision.

(2) The proposal for decision must contain a statement of the reasons for the decision and of each issue of fact or law necessary to the proposed decision and must be prepared by the person who conducted the hearing unless that person becomes unavailable to the agency.

(3) The agency may adopt the proposal for decision as the agency's final order. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the proposal for decision but may not reject or modify the findings of fact unless the agency first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept or reduce the recommended penalty in a proposal for decision but may not increase it without a review of the complete record.

(4) A hearings officer who is a member of an agency adjudicative body may participate in the formulation of the agency's final order, provided that the hearings officer has completed all duties as the hearings officer.

History: En. Sec. 12, Ch. 2, Ex. L. 1971; amd. Sec. 14, Ch. 285, L. 1977; R.C.M. 1947, 82-4212(part); amd. Sec. 4, Ch. 277, L. 1979; amd. Sec. 45, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-4-622. When hearings officer unavailable for decision. (1) If the person who conducted the hearing becomes unavailable to the agency, proposed findings of fact may be prepared by a person who has read the record only if the demeanor of witnesses is considered immaterial by all parties.

(2) The parties may waive compliance with 2-4-621 and this section by written stipulation.

History: En. Sec. 12, Ch. 2, Ex. L. 1971; amd. Sec. 14, Ch. 285, L. 1977; R.C.M. 1947, 82-4212(part); amd. Sec. 6, Ch. 42, L. 1997.

2-4-623. Final orders — notification — availability. (1) (a) A final decision or order adverse to a party in a contested case must be in writing. A final decision must include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. A final decision must be issued within 90 days after a contested case is considered to be submitted for a final decision unless, for good cause shown, the period is extended for an additional time not to exceed 30 days.

(b) If an agency intends to issue a final written decision in a contested case that grants or denies relief and the relief that is granted or denied differs materially from a final agency

decision that was orally announced on the record, the agency may not issue the final written decision without first providing notice to the parties and an opportunity to be heard before the agency.

(2) Findings of fact must be based exclusively on the evidence and on matters officially noticed.

(3) Each conclusion of law must be supported by authority or by a reasoned opinion.

(4) If, in accordance with agency rules, a party submitted proposed findings of fact, the decision must include a ruling upon each proposed finding.

(5) Parties must be notified by mail of any decision or order. Upon request, a copy of the decision or order must be delivered or mailed in a timely manner to each party and to each party's attorney of record.

(6) Each agency shall index and make available for public inspection all final decisions and orders, including declaratory rulings under 2-4-501. An agency decision or order is not valid or effective against any person or party, and it may not be invoked by the agency for any purpose until it has been made available for public inspection as required in this section. This provision is not applicable in favor of any person or party who has actual knowledge of the decision or order or when a state statute or federal statute or regulation prohibits public disclosure of the contents of a decision or order.

History: (1), (3) thru (6) En. Sec. 13, Ch. 2, Ex. L. 1971; amd. Sec. 15, Ch. 285, L. 1977; Sec. 82-4213, R.C.M. 1947; (2) En. Sec. 9, Ch. 2, Ex. L. 1971; Sec. 82-4209, R.C.M. 1947; R.C.M. 1947, 82-4209(7), 82-4213; amd. Sec. 3, Ch. 347, L. 2005; amd. Sec. 1, Ch. 571, L. 2005.

2-4-624 through 2-4-630 reserved.

2-4-631. Licenses. (1) When the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license is required by law to be preceded by notice and opportunity for hearing, the provisions of this chapter concerning contested cases apply.

(2) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(3) Whenever notice is required, no revocation, suspension, annulment, withdrawal, or amendment of any license is lawful unless the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action. If the agency finds that public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

History: En. Sec. 15, Ch. 2, Ex. L. 1971; amd. Sec. 16, Ch. 285, L. 1977; R.C.M. 1947, 82-4215; amd. Sec. 1, Ch. 465, L. 1979.

Part 7 Judicial Review of Contested Cases

2-4-701. Immediate review of agency action. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

History: En. Sec. 16, Ch. 2, Ex. L. 1971; amd. Sec. 17, Ch. 285, L. 1977; R.C.M. 1947, 82-4216(part).

2-4-702. Initiating judicial review of contested cases. (1) (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial review under this chapter. This section does not limit use of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Except as provided in subsection (2)(c), proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final written decision of the agency or, if a rehearing is requested, within 30 days after the written decision is rendered. Except as otherwise provided by statute or subsection (2)(d), the petition must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court.

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315 through 27-19-317 are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs. The court may require or permit subsequent corrections or additions to the record.

History: En. Sec. 16, Ch. 2, Ex. L. 1971; amd. Sec. 17, Ch. 285, L. 1977; R.C.M. 1947, 82-4216(part); amd. Sec. 1, Ch. 520, L. 1985; amd. Sec. 1, Ch. 290, L. 1995; amd. Sec. 1, Ch. 361, L. 2003; amd. Sec. 4, Ch. 347, L. 2005.

2-4-703. Receipt of additional evidence. If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

History: En. Sec. 16, Ch. 2, Ex. L. 1971; amd. Sec. 17, Ch. 285, L. 1977; R.C.M. 1947, 82-4216(5).

2-4-704. Standards of review. (1) The review must be conducted by the court without a jury and must be confined to the record. In cases of alleged irregularities in procedure before the agency not shown in the record, proof of the irregularities may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(2) The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because:

(a) the administrative findings, inferences, conclusions, or decisions are:

(i) in violation of constitutional or statutory provisions;

(ii) in excess of the statutory authority of the agency;

(iii) made upon unlawful procedure;

(iv) affected by other error of law;

(v) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

(vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(b) findings of fact, upon issues essential to the decision, were not made although requested.

(3) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82 on the grounds of unconstitutionality, as provided in subsection (2)(a)(i), the petitioner shall first establish the unconstitutionality of the underlying statute.

History: En. Sec. 16, Ch. 2, Ex. L. 1971; amd. Sec. 17, Ch. 285, L. 1977; R.C.M. 1947, 82-4216(6), (7); amd. Sec. 2, Ch. 83, L. 1989; amd. Sec. 3, Ch. 361, L. 2003.

2-4-705 through 2-4-710 reserved.

2-4-711. Appeals — staying agency decision. An aggrieved party may obtain review of a final judgment of a district court under this part by appeal to the supreme court within 60 days after entry of judgment. Such appeal shall be taken in the manner provided by law for appeals from district courts in civil cases. Unless otherwise provided by statute or unless the agency has granted a stay through the completion of the judicial review process:

(1) if appeal is taken from a judgment of the district court affirming an agency decision, the agency decision shall not be stayed except upon order of the supreme court; except that, in cases where a stay is in effect at the time of the filing of notice of appeal, the stay shall be continued by operation of law for 20 days from the date of filing of the notice;

(2) if appeal is taken from a judgment of the district court reversing or modifying an agency decision, the agency decision shall be stayed pending final determination of the appeal unless the supreme court orders otherwise.

History: En. Sec. 17, Ch. 2, Ex. L. 1971; amd. Sec. 18, Ch. 285, L. 1977; R.C.M. 1947, 82-4217.

CHAPTER 6 PUBLIC RECORDS

Part 1 Public Records Generally

2-6-101. Definitions. (1) Writings are of two kinds:

(a) public; and

(b) private.

(2) Public writings are:

(a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country, except records that are constitutionally protected from disclosure;

(b) public records, kept in this state, of private writings, including electronic mail, except as provided in 22-1-1103 and 22-3-807 and except for records that are constitutionally protected from disclosure.

(3) Public writings are divided into four classes:

(a) laws;

(b) judicial records;

(c) other official documents;

(d) public records, kept in this state, of private writings, including electronic mail.

(4) All other writings are private.

History: En. Secs. 3170, 3171, 3172, 3182, C. Civ. Proc. 1895; re-en. Secs. 7895, 7896, 7897, 7900, Rev. C. 1907; re-en. Secs. 10539, 10540, 10541, 10544, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 1887, 1888, 1889, 1894; re-en. Secs. 10539, 10540, 10541, 10544, R.C.M. 1935; R.C.M. 1947, 93-1001-1, 93-1001-2, 93-1001-3, 93-1001-6; amd. Sec. 4, Ch. 476, L. 1985; amd. Sec. 11, Ch. 748, L. 1991; amd. Sec. 1, Ch. 485, L. 1999; amd. Sec. 2, Ch. 77, L. 2001.

2-6-102. Citizens entitled to inspect and copy public writings. (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in 22-1-1103, 22-3-807, or subsection (3) of this section and as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing that a citizen has a right to inspect is bound to give the citizen on demand a certified copy of it, on payment of the legal fees for the copy, and the copy is admissible as evidence in like cases and with like effect as the original writing. The certified copy provision of this subsection does not apply to the public record of electronic mail provided in an electronic format.

(3) Records and materials that are constitutionally protected from disclosure are not subject to the provisions of this section. Information that is constitutionally protected from disclosure is information in which there is an individual privacy interest that clearly exceeds the merits of public disclosure, including legitimate trade secrets, as defined in 30-14-402, and matters related to individual or public safety.

(4) A public officer may withhold from public scrutiny information relating to individual privacy or individual or public safety or security of public facilities, including jails, correctional facilities, private correctional facilities, and prisons, if release of the information may jeopardize the safety of facility personnel, the public, or inmates of a facility. Security features that may be protected under this section include but are not limited to architectural floor plans, blueprints, designs, drawings, building materials, alarms system plans, surveillance techniques, and facility staffing plans, including staff numbers and locations. A public officer may not withhold from public scrutiny any more information than is required to protect an individual privacy interest or safety or security interest.

History: En. Secs. 3180, 3181, C. Civ. Proc. 1895; re-en. Secs. 7898, 7899, Rev. C. 1907; re-en. Secs. 10542, 10543, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 1892, 1893; re-en. Secs. 10542, 10543, R.C.M. 1935; R.C.M. 1947, 93-1001-4, 93-1001-5; amd. Sec. 5, Ch. 476, L. 1985; amd. Sec. 12, Ch. 748, L. 1991; amd. Sec. 2, Ch. 485, L. 1999; amd. Sec. 3, Ch. 77, L. 2001.

2-6-103. Filing and copying fees. (1) The secretary of state shall charge and collect fees for filing and copying services.

(2) A member of the legislature or state or county officer may not be charged for any search relative to matters appertaining to the duties of the member's office or for a certified copy of any law or resolution passed by the legislature relative to the member's official duties.

(3) The secretary of state may not charge a fee, other than the fees authorized in 2-6-110, for providing electronic information.

(4) Fees must be collected in advance and, when collected by the secretary of state, are not refundable.

(5) Fees authorized by this section must be set and deposited in accordance with 2-15-405.

History: En. Sec. 410, Pol. C. 1895; amd. Sec. 1, p. 47, L. 1899; amd. Sec. 1, Ch. 127, L. 1903; amd. Sec. 1, Ch. 74, L. 1905; re-en. Sec. 165, Rev. C. 1907; amd. Sec. 1, Ch. 91, L. 1921; re-en. Sec. 145, R.C.M. 1921; Cal. Pol. C. Sec. 416; amd. Sec. 1, Ch. 50, L. 1935; re-en. Sec. 145, R.C.M. 1935; amd. Sec. 1, Ch. 116, L. 1961; amd. Sec. 141, Ch. 300, L. 1967; amd. Sec. 3, Ch. 185, L. 1971; amd. Sec. 1, Ch. 137, L. 1974; R.C.M. 1947, 25-102; amd. Sec. 5, Ch. 184, L. 1979; amd. Sec. 18, Ch. 429, L. 1979; amd. Sec. 2, Ch. 254, L. 1991; amd. Sec. 2, Ch. 411, L. 1993; amd. Sec. 1, Ch. 406, L. 1997; amd. Sec. 1, Ch. 125, L. 1999; amd. Sec. 6, Ch. 396, L. 2001.

2-6-104. Records of officers open to public inspection. Except as provided in 27-18-111 and 42-6-101, the public records and other matters, except records that are constitutionally protected from disclosure, in the office of any officer are at all times during office hours open to the inspection of any person.

History: En. Sec. 1136, Pol. C. 1895; re-en. Sec. 438, Rev. C. 1907; re-en. Sec. 455, R.C.M. 1921; Cal. Pol. C. Sec. 1032; re-en. Sec. 455, R.C.M. 1935; amd. Sec. 1, Ch. 112, L. 1945; R.C.M. 1947, 59-512(part); amd. Sec. 157, Ch. 480, L. 1997; amd. Sec. 3, Ch. 485, L. 1999.

2-6-105. Removal of public records. Any record, a transcript of which is admissible in evidence, must not be removed from the office where it is kept, except upon the order of a court or judge in cases where the inspection of the record is shown to be essential to the just determination of the cause or proceeding pending or where the court is held in the same building with such office.

History: En. Sec. 3240, C. Civ. Proc. 1895; re-en. Sec. 7953, Rev. C. 1907; re-en. Sec. 10597, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1950; re-en. Sec. 10597, R.C.M. 1935; R.C.M. 1947, 93-1101-20(part).

2-6-106. Possession of records. Each public officer is entitled to the possession of all books and papers pertaining to that office or in the custody of a former incumbent by virtue of that office.

History: En. Sec. 1120, Pol. C. 1895; re-en. Sec. 427, Rev. C. 1907; re-en. Sec. 460, R.C.M. 1921; Cal. Pol. C. Sec. 1014; re-en. Sec. 460, R.C.M. 1935; R.C.M. 1947, 59-530; Sec. 2-6-303(1), MCA 1979; redes. 2-6-106 by Code Commissioner, 1979; amd. Sec. 46, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-6-107. Proceedings to compel delivery of records. If any person, whether a former incumbent or another person, refuses or neglects to deliver to the actual incumbent any such books or papers, such actual incumbent may apply, by complaint, to any district court or judge of the county where the person so refusing or neglecting resides and the court or judge must proceed in a summary way, after notice to the adverse party, to hear the allegations and proofs of the parties and to order any such books and papers to be delivered to the petitioners.

History: En. Sec. 1121, Pol. C. 1895; re-en. Sec. 428, Rev. C. 1907; re-en. Sec. 461, R.C.M. 1921; Cal. Pol. C. Sec. 1015; re-en. Sec. 461, R.C.M. 1935; R.C.M. 1947, 59-531; Sec. 2-6-305, MCA 1979; redes. 2-6-107 by Code Commissioner, 1979.

2-6-108. Attachment and warrant to enforce. The execution of the order and delivery of the books and papers may be enforced by attachment as for a witness and also, at the request of the plaintiff, by a warrant directed to the sheriff or a constable of the county, commanding the sheriff or constable to search for the books and papers and to take and deliver them to the plaintiff.

History: En. Sec. 1122, Pol. C. 1895; re-en. Sec. 429, Rev. C. 1907; re-en. Sec. 462, R.C.M. 1921; Cal. Pol. C. Sec. 1016; re-en. Sec. 462, R.C.M. 1935; R.C.M. 1947, 59-532; Sec. 2-6-306, MCA 1979; redes. 2-6-108 by Code Commissioner, 1979; amd. Sec. 47, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-6-109. Prohibition on distribution or sale of mailing lists — exceptions — penalty. (1) Except as provided in subsections (3) through (9), in order to protect the privacy of those who deal with state and local government:

(a) an agency may not distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) a list of persons prepared by the agency may not be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) This section does not prevent an individual from compiling a mailing list by examination of records that are otherwise open to public inspection.

(4) This section does not apply to the lists of registered electors and the new voter lists provided for in 13-2-115, to lists of the names of employees governed by Title 39, chapter 31, to lists of persons holding driver's licenses or Montana identification cards provided for under 61-5-127, or to lists of persons holding professional or occupational licenses governed by Title 23, chapter 3; Title 37, chapters 1 through 4, 6 through 29, 31, 34, 35, 40, 47, 48, 50, 51, 53, 54, 60, 65 through 69, 72, 73, and 76; and Title 50, chapters 39, 72, 74, and 76.

(5) This section does not prevent an agency from providing a list to persons providing precensuring or continuing educational courses subject to state law or subject to Title 33, chapter 17.

(6) This section does not apply to the right of access by Montana law enforcement agencies.

(7) This section does not apply to a corporate information list developed by the secretary of state containing the name, address, registered agent, officers, and directors of business, nonprofit, religious, professional, and close corporations authorized to do business in this state.

(8) This section does not apply to the use by the public employees' retirement board of a mailing list of board-administered retirement system participants to send materials on behalf of a retiree organization formed for board-administered retirement system participants and with tax-exempt status under section 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the mailing list is not released to the organization.

(9) This section does not apply to a public school providing lists of graduating students to representatives of the armed forces of the United States or to the national guard for the purposes of recruitment.

(10) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor.

History: En. Sec. 1, Ch. 606, L. 1979; amd. Sec. 6, Ch. 683, L. 1985; amd. Sec. 1, Ch. 663, L. 1989; amd. Sec. 2, Ch. 289, L. 1991; amd. Sec. 1, Ch. 379, L. 1995; amd. Sec. 1, Ch. 412, L. 1995; amd. Sec. 1, Ch. 364, L. 1997; amd. Sec. 4, Ch. 370, L. 1997; amd. Sec. 126, Ch. 305, L. 1999; amd. Sec. 1, Ch. 319, L. 2001; amd. Sec. 11, Ch. 363, L. 2001; amd. Sec. 2, Ch. 441, L. 2003; amd. Sec. 1, Ch. 149, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 149 in (3) after "examination of" substituted "records" for "original documents or applications"; in (4) at end after "61-5-127" inserted "or to lists of persons holding professional or occupational licenses governed by Title 23, chapter 3; Title 37, chapters 1 through 4, 6 through 29, 31, 34, 35, 40, 47, 48, 50, 51, 53, 54, 60, 65 through 69, 72, 73, and 76; and Title 50, chapters 39, 72, 74, and 76"; and made minor changes in style. Amendment effective October 1, 2007.

2-6-110. Electronic information and nonprint records — public access — fees.

(1) (a) Except as provided by law, each person is entitled to a copy of public information compiled, created, or otherwise in the custody of public agencies that is in electronic format or other nonprint media, including but not limited to videotapes, photographs, microfilm, film, or computer disk, subject to the same restrictions applicable to the information in printed form. All restrictions relating to confidentiality, privacy, business secrets, and copyright are applicable to the electronic or nonprint information.

(b) The provisions of subsection (1)(a) do not apply to collections of the Montana historical society established pursuant to 22-3-101.

(2) Except as provided by law and subject to subsection (3), an agency may charge a fee, not to exceed:

(a) the agency's actual cost of purchasing the electronic media used for transferring data, if the person requesting the information does not provide the media;

(b) expenses incurred by the agency as a result of mainframe and midtier processing charges;

(c) expenses incurred by the agency for providing online computer access to the person requesting access;

(d) other out-of-pocket expenses directly associated with the request for information, including the retrieval or production of electronic mail; and

(e) the hourly market rate for an administrative assistant in pay band 3 of the broadband pay plan, as provided for in 2-18-301, in the current fiscal year for each hour, or fraction of an hour, after one-half hour of copying service has been provided.

(3) (a) In addition to the allowable fees in subsection (2), the department of revenue may charge an additional fee as reimbursement for the cost of developing and maintaining the property valuation and assessment system database from which the information is requested. The fee must be charged to persons, federal agencies, state agencies, and other entities requesting the database or any part of the database from any department property valuation and assessment system. The fee may not be charged to the governor's office of budget and program planning, the state tax appeal board, or any legislative agency or committee.

(b) The department of revenue may not charge a fee for information provided from any department property valuation and assessment system database to a local taxing jurisdiction for use in taxation and other governmental functions or to an individual taxpayer concerning the taxpayer's property.

(c) All fees received by the department of revenue under subsection (2) and this subsection (3) must be deposited in a state special revenue fund as provided in 15-1-521.

(d) Fees charged by the secretary of state pursuant to this section must be set and deposited in accordance with 2-15-405.

(4) For the purposes of this section, the term "agency" has the meaning provided in 2-3-102 but includes legislative, judicial, and state military agencies.

(5) An agency may not charge more than the amount provided under subsection (2) for providing a copy of an existing nonprint record.

(6) An agency shall ensure that a copy of information provided to a requester is of a quality that reflects the condition of the original if requested by the requester.

(7) This section does not authorize the release of electronic security codes giving access to private information.

History: En. Sec. 1, Ch. 254, L. 1991; amd. Sec. 10, Ch. 640, L. 1993; amd. Sec. 1, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 4, L. 1995; amd. Sec. 1, Ch. 484, L. 1995; amd. Sec. 1, Ch. 405, L. 1999; amd. Sec. 4, Ch. 77, L. 2001; amd. Sec. 7, Ch. 396, L. 2001; amd. Sec. 1, Ch. 81, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 81 in (2)(e) near beginning inserted "market", inserted language regarding administrative assistant in pay band 3 of the broadband plan provided for in 2-18-301, and near middle after "fiscal year" deleted "for a state employee classified as grade 10, market salary, under 2-18-312". Amendment effective July 1, 2007.

2-6-111. Custody and reproduction of records by secretary of state. (1) The secretary of state is charged with the custody of:

- (a) the enrolled copy of the constitution;
- (b) all the acts and resolutions passed by the legislature;
- (c) the journals of the legislature;
- (d) the great seal;
- (e) all books, records, parchments, maps, and papers kept or deposited in the secretary of state's office pursuant to law.

(2) All records included in subsection (1) may be kept and reproduced in accordance with rules adopted by the secretary of state in consultation with the state records committee provided for in 2-15-1013.

(3) The state records committee created by 2-15-1013 may approve the disposal of original records once those records are reproduced as provided for in subsection (2), unless disposal takes the form of transfer of records. Reproduction is not necessary for transferred records. The reproduction or certified copy of a record may be used in place of the original for all purposes, including as evidence in any court or proceeding, and has the same force and effect as the original record.

(4) The secretary of state shall prepare enlarged typed or photographic copies of the records whenever their production is required by law.

(5) At least two copies must be made of all records reproduced as provided for in subsection (2). The secretary of state shall place one copy in a fireproof storage place and shall retain the other copy in the office with suitable equipment for displaying a record by projection to not less than its original size and for preparing copies of the record for persons entitled to copies.

(6) All duplicates of records must be identified and indexed.

History: En. Sec. 400, Pol. C. 1895; re-en. Sec. 153, Rev. C. 1907; re-en. Sec. 133, R.C.M. 1921; Cal. Pol. C. Sec. 407; re-en. Sec. 133, R.C.M. 1935; R.C.M. 1947, 82-2201; amd. Sec. 1, Ch. 152, L. 1979; amd. Sec. 8, Ch. 467, L. 1987; amd. Sec. 1, Ch. 185, L. 1989; amd. Sec. 48, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-6-112. Concealment of public hazards prohibited — concealment of information related to settlement or resolution of civil suits prohibited. (1) This section may be cited as the "Gus Barber Antisecrecy Act".

(2) As used in this section, "public hazard" means a device, instrument, or manufactured product, or a condition of a device, instrument, or manufactured product, that endangers public safety or health and has caused injury, as defined in 27-1-106.

(3) Except as provided in this section, a court may not enter a final order or judgment that has the purpose or effect of concealing a public hazard.

(4) Any portion of a final order or judgment entered or written final settlement agreement entered into that has the purpose or effect of concealing a public hazard is contrary to public policy, is void, and may not be enforced. This section does not prohibit the parties from keeping the monetary amount of a written final settlement agreement confidential.

(5) A party to civil litigation may not request, as a condition to the production of discovery, that another party stipulate to an order that would violate this section.

(6) This section does not apply to:

- (a) trade secrets, as defined in 30-14-402, that are not pertinent to public hazards and that are protected pursuant to Title 30, chapter 14, part 4;
- (b) other information that is confidential under state or federal law; or
- (c) a health care provider, as defined in 27-6-103.

(7) Any affected person, including but not limited to a representative of the news media, has standing to contest a final order or judgment or written final settlement agreement that violates this section by motion in the court in which the case was filed.

(8) The court shall examine the disputed information or materials in camera. If the court finds that the information or materials or portions of the information or materials consist of information concerning a public hazard, the court shall allow disclosure of the information or materials. If allowing disclosure, the court shall allow disclosure of only that portion of the information or materials necessary or useful to the public concerning the public hazard.

(9) This section has no applicability to a protective order issued under Rule 26(c) of the Montana Rules of Civil Procedure or to any materials produced under the order. Any materials used as exhibits may be publicly disclosed pursuant to the provisions of subsections (7) and (8).

History: En. Sec. 1, Ch. 390, L. 2005.

Part 2 Public Records Management

2-6-201. Purpose. The purpose of this part is to create an effective records management program for executive branch agencies of the state of Montana and political subdivisions by establishing guidelines and procedures for the efficient and economical control of the creation, utilization, maintenance, and preservation of state and local records.

History: En. 82-3333 by Sec. 2, Ch. 339, L. 1977; R.C.M. 1947, 82-3333; amd. Sec. 5, Ch. 420, L. 1993.

2-6-202. Definitions. As used in this part, the following definitions apply:

(1) (a) "Public records" includes:

(i) any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including copies of the record required by law to be kept as part of the official record, regardless of physical form or characteristics, that:

(A) has been made or received by a state agency to document the transaction of official business;

(B) is a public writing of a state agency pursuant to 2-6-101(2)(a); and

(C) is designated by the state records committee for retention pursuant to this part; and

(ii) all other records or documents required by law to be filed with or kept by any agency of the state of Montana.

(b) The term includes electronic mail sent or received in connection with the transaction of official business.

(c) The term does not include any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other type of document that is for reference purposes only, a preliminary draft, a telephone messaging slip, a routing slip, part of a stock of publications or of preprinted forms, or a superseded publication.

(2) "State records committee" or "committee" means the state records committee provided for in 2-15-1013.

History: (1)En. 82-3334 by Sec. 3, Ch. 339, L. 1977; Sec. 82-3334, R.C.M. 1947; (2)En. by Code Commissioner, 1979; R.C.M. 1947, 82-3334(1); amd. Sec. 5, Ch. 77, L. 2001; amd. Sec. 1, Ch. 30, L. 2003.

2-6-203. Secretary of state's powers and duties. (1) In order to insure the proper management and safeguarding of public records, the secretary of state shall undertake the following:

(a) establish guidelines for inventorying, cataloging, retaining, and transferring all public records of state agencies;

(b) review and analyze all state agency filing systems and procedures and approve filing system equipment requests;

(c) establish and operate the state records center, as authorized by appropriation, for the purpose of storing and servicing public records not retained in office space;

(d) gather and disseminate information on all phases of records management, including current practices, methods, procedures, and devices for the efficient and economical management of records;

(e) operate a central microfilm unit which will microfilm, on a cost recovery basis, all records approved for filming by the office of origin and the secretary of state; and

(f) approve microfilming projects and microfilm equipment purchases undertaken by all state agencies.

(2) Upon request, the secretary of state shall assist and advise in the establishment of records management procedures in the legislative and judicial branches of state government and shall, as required by them, provide services similar to those available to the executive branch.

History: (1)En. 82-3335 by Sec. 4, Ch. 339, L. 1977; Sec. 82-3335, R.C.M. 1947; (2)En. 82-3337 by Sec. 6, Ch. 339, L. 1977; Sec. 82-3337, R.C.M. 1947; R.C.M. 1947, 82-3335, 82-3337; amd. Sec. 1, Ch. 378, L. 1991.

2-6-204. State records committee approval. The committee shall approve, modify, or disapprove the recommendations on retention schedules of all public records to determine which documents not included in the provisions of this part are to be designated public records and approve agency requests to dispose of such public records.

History: En. 82-3338 by Sec. 7, Ch. 339, L. 1977; R.C.M. 1947, 82-3338(3).

2-6-205. Preservation of public records. All public records are and shall remain the property of the state. They shall be delivered by outgoing officials and employees to their successors and shall be preserved, stored, transferred, destroyed, or disposed of and otherwise managed only in accordance with the provisions of this part.

History: En. 82-3334 by Sec. 3, Ch. 339, L. 1977; R.C.M. 1947, 82-3334(2).

2-6-206. Protection and storage of essential records. (1) In order to provide for the continuity and preservation of civil government, each elected and appointed officer of the executive branch shall designate certain public records as essential records needed for an emergency or for the reestablishment of normal operations after the emergency. A list of essential records must be forwarded to the secretary of state. The list must be reviewed from time to time by the elected or appointed officers to ensure its accuracy. Any changes or revisions must be forwarded to the secretary of state.

(2) Each elected and appointed officer of state government shall ensure that the security of essential records is accomplished by the most economical means possible. Protection and storage of essential records may be by vaulting, planned or natural dispersal of copies, storage in the state archives or in an alternative location provided pursuant to 2-6-211(2), or any other method approved by the secretary of state.

(3) Reproductions of essential records may be by photocopy, magnetic tape, microfilm, or other methods approved by the secretary of state.

History: En. 82-3341 by Sec. 10, Ch. 339, L. 1977; R.C.M. 1947, 82-3341; amd. Sec. 2, Ch. 378, L. 1991; amd. Sec. 2, Ch. 30, L. 2003.

2-6-207. Certified copies of public records. (1) The Montana historical society shall reproduce and certify copies of public records in its possession upon application of any citizen of this state.

(2) The certified copy of a public record has the same force in law as if made by the original custodian.

History: En. Sec. 1, Ch. 102, L. 1979.

2-6-208 through 2-6-210 reserved.

2-6-211. Transfer and storage of public records. (1) All public records not required in the current operation of the office where they are made or kept and all records of each agency, commission, committee, or any other activity of the executive branch of state government that may be abolished or discontinued must be, in accordance with approved records retention schedules, either transferred to the state records center or transferred to the custody of the state archives if the records are considered to have permanent administrative or historical value.

(2) Subject to approval by the secretary of state pursuant to 2-6-206, the state records center and the state archives may store transferred permanent public records in locations other than in the buildings occupied by the state records center or the state archives when it is in the best interests of the state.

(3) When records are transferred to the state records center, the transferring agency does not lose its rights of control and access. The state records center is only a custodian of the agency records, and access is only by agency approval. Agency records for which the state records center acts as custodian may not be subpoenaed from the state records center but must be subpoenaed

from the agency to which the records belong. Fees may be charged to cover the cost of records storage and servicing.

(4) If an agency does not wish to transfer records as provided in an approved retention schedule, the agency shall, within 30 days, notify the secretary of state and request a change in the schedule.

History: En. 82-3340 by Sec. 9, Ch. 339, L. 1977; R.C.M. 1947, 82-3340; amd. Sec. 3, Ch. 378, L. 1991; amd. Sec. 2, Ch. 6, Sp. L. January 1992; amd. Sec. 3, Ch. 30, L. 2003.

2-6-212. Disposal of public records. (1) Except as provided in subsection (2), no public record may be disposed of or destroyed without the unanimous approval of the state records committee. When approval is required, a request for the disposal or destruction must be submitted to the state records committee by the agency concerned.

(2) The state records committee may by unanimous approval establish categories of records for which no disposal request is required, providing those records are retained for the designated retention period.

History: En. 82-3339 by Sec. 8, Ch. 339, L. 1977; R.C.M. 1947, 82-3339; amd. Sec. 1, Ch. 173, L. 1981.

2-6-213. Agency responsibilities and transfer schedules. Each executive branch agency of state government shall administer its records management function and shall:

(1) coordinate all aspects of the agency records management function;

(2) manage the inventorying of all public records within the agency for disposition, scheduling, and transfer action in accordance with procedures prescribed by the secretary of state and the state records committee;

(3) analyze records inventory data, examine and compare divisional or unit inventories for duplication of records, and recommend to the secretary of state and the state records committee minimal retentions for all copies of public records within the agency;

(4) approve all records disposal requests that are submitted by the agency to the state records committee;

(5) review established records retention schedules to ensure that they are complete and current; and

(6) officially designate an agency records custodian to manage the functions provided for in this section.

History: En. 82-3336 by Sec. 5, Ch. 339, L. 1977; R.C.M. 1947, 82-3336; amd. Sec. 4, Ch. 378, L. 1991; amd. Sec. 4, Ch. 30, L. 2003.

2-6-214. Department of administration — powers and duties. (1) In order to ensure compatibility with the information technology systems of state government, the department of administration shall develop standards for technological compatibility for state agencies for records management equipment or systems used to electronically capture, store, or retrieve public records through computerized, optical, or other electronic methods.

(2) The department of administration shall approve all acquisitions of executive agency records management equipment or systems used to electronically capture, store, or retrieve public records through computerized, optical, or other electronic methods to ensure compatibility with the standards developed under subsection (1).

(3) The department of administration is responsible for the management and operation of equipment, systems, facilities, or processes integral to the department's central computer center and statewide telecommunications system.

History: En. Sec. 8, Ch. 378, L. 1991; amd. Sec. 20, Ch. 313, L. 2001.

Part 4 Local Government Records

2-6-401. Definitions. For the purposes of this part, the following definitions apply:

(1) "Local government" means:

(a) any city, town, county, consolidated city-county, or school district; and

(b) any subdivision of an entity named in subsection (1)(a).

(2) (a) "Public records" includes:

(i) any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including copies of the record required by law to be kept as part of the official record, regardless of physical form or characteristics, that:

(A) has been made or received by any local government to document the transaction of official business;

(B) is a public writing of the local government pursuant to 2-6-101(2)(a); and

(C) is designated for retention by the local government records committee established in 2-6-402; and

(ii) all other records or documents required by law to be filed with or kept by any local government in the state of Montana, except military discharge certificates filed under 7-4-2614.

(b) The term includes electronic mail sent or received in connection with the transaction of official duties.

(c) The term does not include any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other type of document that is for reference purposes only, a preliminary draft, a telephone messaging slip, a routing slip, part of a stock of publications or of preprinted forms, or a superseded publication.

(3) "Records custodian" means any individual responsible for the proper filing, storage, or safekeeping of any public records.

History: En. Sec. 1, Ch. 420, L. 1993; amd. Sec. 7, Ch. 77, L. 2001; amd. Sec. 5, Ch. 30, L. 2003; amd. Sec. 1, Ch. 116, L. 2003.

2-6-402. Local government records committee — creation. (1) There is a local government records committee.

(2) The committee consists of the following eight members:

(a) the state archivist;

(b) the state records manager;

(c) a representative of the department of administration;

(d) two local records custodians, appointed by the director of the Montana historical society;

(e) two additional local records custodians, appointed by the secretary of state; and

(f) a citizen representing the Montana state genealogical society, appointed by the secretary of state, who shall serve as a volunteer.

(3) Committee members subject to appointment shall hold office for a period of 2 years beginning on January 1 of the year following their appointment.

(4) Any vacancies must be filled in the same manner that they were filled originally.

(5) The committee shall elect a presiding officer and a vice presiding officer.

(6) The committee shall meet twice a year upon the call of the secretary of state or the presiding officer.

(7) Except as provided in subsection (2)(f), members of the committee not serving as part of their compensated government employment must be compensated in accordance with 2-18-501 through 2-18-503 for each day in committee attendance. Members who serve as part of their compensated government employment may not receive additional compensation, but the employing governmental entity shall furnish, in accordance with the prevailing per diem rates, a reasonable allowance for travel and other expenses incurred in attending committee meetings.

History: En. Sec. 2, Ch. 420, L. 1993; amd. Sec. 1, Ch. 179, L. 1995; amd. Sec. 2, Ch. 302, L. 2001; amd. Sec. 6, Ch. 483, L. 2001.

2-6-403. Duties and responsibilities. (1) The local government records committee shall approve, modify, or disapprove proposals for local government records retention and disposition schedules.

(2) The local government records committee shall appoint a subcommittee, known as the local government records destruction subcommittee, to handle requests for disposal of records. The subcommittee consists of the state archivist and a representative of the department of administration. Unless specifically authorized by statute or by the retention and disposition schedule, a local government public record may not be destroyed or otherwise disposed of without the unanimous approval of the subcommittee. When approval is required, a request for the disposal or destruction of any local government records must be submitted to the subcommittee by the entity concerned. If there is not unanimous approval of the subcommittee,

the issue of the disposition of a record must be referred to the local government records committee for approval. When approval is obtained from the subcommittee or from the local government records committee for the disposal of a record, the local government records committee shall consider the inclusion of a new category of record for which a disposal request is not required and shall update the schedule.

(3) The local government records committee shall establish a retention and disposition schedule for categories of records for which a disposal request is not required. The committee shall publish the retention and disposition schedules. Updates to those schedules, if any, must be published at least annually.

(4) The committee shall respond to requests for technical advice on matters relating to local government records.

(5) The committee shall provide leadership and coordination in matters affecting the records of multiple local governments.

History: En. Sec. 3, Ch. 420, L. 1993; amd. Sec. 2, Ch. 179, L. 1995; amd. Sec. 1, Ch. 323, L. 1997; amd. Sec. 7, Ch. 483, L. 2001.

2-6-404. Rulemaking authority. The secretary of state shall adopt rules to implement 2-6-402 and 2-6-403.

History: En. Sec. 4, Ch. 420, L. 1993.

2-6-405. Destruction of local government public records prohibited prior to offering — central registry — notification. (1) A local government public record more than 10 years old may not be destroyed without it first being offered to the Montana historical society, the state archives, Montana public and private universities and colleges, local historical museums, local historical societies, Montana genealogical groups, and the general public.

(2) The availability of a public record to be destroyed must be noticed to the entities listed in subsection (1) at least 180 days prior to disposal.

(3) (a) Claimed records must be given to entities in the order of priority listed in subsection (1).

(b) All expenses for the removal of claimed records must be paid by the entity claiming the records.

(c) The local government records committee, provided for in 2-6-402, shall establish procedures by which public records must be offered and claimed pursuant to this section.

(d) The local government records committee shall develop and maintain a central registry of the entities identified in subsection (1) who are interested in receiving notice of the potential destruction of public records pursuant to this section. The registry must be constructed to allow a local government entity to notify the local government records committee when the entity intends to destroy documents covered under this section and that allows the local government records committee to subsequently notify the entities in the registry. A local government entity's notice to the local government records committee pursuant to this subsection and the record committee's notice to the entities listed on the registry fulfills the notification requirements of this section.

History: En. Sec. 1, Ch. 302, L. 2001.

CHAPTER 7 STUDIES, REPORTS, AND AUDITS

Part 5 Audits of Political Subdivisions

2-7-501. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Audit" means a financial audit and includes financial statement and financial-related audits as defined by government auditing standards as established by the U.S. comptroller general.

(2) "Board" means the Montana board of public accountants provided for in 2-15-1756.

(3) "Department" means the department of administration.

(4) (a) “Financial assistance” means assistance provided by a federal, state, or local government entity to a local government entity or subrecipient to carry out a program. Financial assistance may be in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, or other noncash assistance. Financial assistance includes awards received directly from federal and state agencies or indirectly when subrecipients receive funds identified as federal or state funds by recipients. The granting agency is responsible for identifying the source of funds awarded to recipients. The recipient is responsible for identifying the source of funds awarded to subrecipients.

(b) Financial assistance does not include direct federal, state, or local government cash assistance to individuals.

(5) “Financial report” means a presentation of financial statements, including applicable supplemental notes and supplemental schedules, that are prepared in a format published by the department using the Budgetary Accounting and Reporting System for Montana Cities, Towns, and Counties Manual and that reflect a current financial position and the operating results for the 1-year reporting period.

(6) “Independent auditor” means:

(a) a federal, state, or local government auditor who meets the standards specified in the government auditing standards; or

(b) a licensed accountant who meets the standards in subsection (6)(a).

(7) (a) “Local government entity” means a county, city, district, or public corporation that:

(i) has the power to raise revenue or receive, disburse, or expend local, state, or federal government revenue for the purpose of serving the general public;

(ii) is governed by a board, commission, or individual elected or appointed by the public or representatives of the public; and

(iii) receives local, state, or federal financial assistance.

(b) Local government entities include but are not limited to:

(i) airport authority districts;

(ii) cemetery districts;

(iii) counties;

(iv) county housing authorities;

(v) county road improvement districts;

(vi) county sewer districts;

(vii) county water districts;

(viii) county weed management districts;

(ix) drainage districts;

(x) fire companies;

(xi) fire districts;

(xii) fire service areas;

(xiii) hospital districts;

(xiv) incorporated cities or towns;

(xv) irrigation districts;

(xvi) mosquito districts;

(xvii) municipal fire departments;

(xviii) municipal housing authority districts;

(xix) port authorities;

(xx) solid waste management districts;

(xxi) rural improvement districts;

(xxii) school districts, including a district’s extracurricular funds;

(xxiii) soil conservation districts;

(xxiv) special education or other cooperatives;

(xxv) television districts;

(xxvi) urban transportation districts;

(xxvii) water conservancy districts; and

(xxviii) other miscellaneous and special districts.

(8) “Revenues” means all receipts of a local government entity from any source excluding the proceeds from bond issuances.

History: En. 82-4515 by Sec. 1, Ch. 380, L. 1975; R.C.M. 1947, 82-4515; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 489, L. 1991; amd. Sec. 2, Ch. 7, L. 2001; amd. Sec. 33, Ch. 278, L. 2001; amd. Sec. 8, Ch. 483, L. 2001; amd. Sec. 3, Ch. 114, L. 2003; amd. Sec. 1, Ch. 449, L. 2007.

Compiler’s Comments

2007 Amendment: Chapter 449 in definition of local government entity in (b)(x) after “fire” substituted “companies” for “department relief associations”, inserted (b)(xii) defining fire service areas as local government entities, and inserted (b)(xvii) defining municipal fire departments as local government entities; and made minor changes in style. Amendment effective June 1, 2007.

2-7-502. Short title — purpose. (1) This part may be cited as the “State of Montana Single Audit Act”.

(2) The purposes of this part are to:

(a) improve the financial management of local government entities with respect to federal, state, and local financial assistance;

(b) establish uniform requirements for financial reports and audits of local government entities;

(c) ensure constituent interests by determining that compliance with all appropriate statutes and regulations is accomplished;

(d) ensure that the financial condition and operations of the local government entities are reasonably conducted and reported;

(e) ensure that the stewardship of local government entities is conducted in a manner to preserve and protect the public trust;

(f) ensure that local government entities accomplish, with economy and efficiency, the duties and responsibilities of the entities in accordance with the legal requirements imposed and the desires of the public; and

(g) promote the efficient and effective use of audit resources.

History: En. 82-4517 by Sec. 3, Ch. 380, L. 1975; R.C.M. 1947, 82-4517; amd. Sec. 2, Ch. 489, L. 1991.

2-7-503. Financial reports and audits of local government entities. (1) The governing body or managing or executive officer of a local government entity, other than a school district or associated cooperative, shall ensure that a financial report is made every year. A school district or associated cooperative shall comply with the provisions of 20-9-213. The financial report must cover the preceding fiscal year, be in a form prescribed by the department, and be completed within 6 months of the end of the reporting period. The local government entity shall submit the financial report to the department for review.

(2) The department shall prescribe a uniform reporting system for all local government entities subject to financial reporting requirements, other than school districts. The superintendent of public instruction shall prescribe the reporting requirements for school districts.

(3) (a) The governing body or managing or executive officer of each local government entity receiving revenue or financial assistance in the period covered by the financial report in excess of the threshold dollar amount established by the director of the office of management and budget pursuant to 31 U.S.C. 7502(a)(3), but regardless of the source of revenue or financial assistance, shall cause an audit to be made at least every 2 years. The audit must cover the entity’s preceding 2 fiscal years. The audit must commence within 9 months from the close of the last fiscal year of the audit period. The audit must be completed and submitted to the department for review within 1 year from the close of the last fiscal year covered by the audit.

(b) The governing body or managing or executive officer of a local government entity that does not meet the criteria established in subsection (3)(a) shall at least once every 4 years, if directed by the department, or, in the case of a school district, if directed by the department at the request of the superintendent of public instruction, cause a financial review, as defined by department rule, to be conducted of the financial statements of the entity for the preceding fiscal year.

(4) An audit conducted in accordance with this part is in lieu of any financial or financial and compliance audit of an individual financial assistance program that a local government is required to conduct under any other state or federal law or regulation. If an audit conducted

pursuant to this part provides a state agency with the information that it requires to carry out its responsibilities under state or federal law or regulation, the state agency shall rely upon and use that information to plan and conduct its own audits or reviews in order to avoid a duplication of effort.

(5) In addition to the audits required by this section, the department may at any time conduct or contract for a special audit or review of the affairs of any local government entity referred to in this part. The special audit or review must, to the extent practicable, build upon audits performed pursuant to this part.

(6) The fee for the special audit or review must be a charge based upon the costs incurred by the department in relation to the special audit or review. The audit fee must be paid by the local government entity to the department of revenue and must be deposited in the enterprise fund to the credit of the department.

History: En. 82-4516, 82-4529 by Secs. 2, 15, Ch. 380, L. 1975; R.C.M. 1947, 82-4516(1) thru (3), 82-4529; amd. Sec. 1, Ch. 336, L. 1979; amd. Sec. 1, Ch. 573, L. 1981; amd. Sec. 1, Ch. 49, L. 1983; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 1, Ch. 84, L. 1985; amd. Sec. 1, Ch. 565, L. 1985; amd. Sec. 1, Ch. 673, L. 1985; amd. Sec. 1, Ch. 140, L. 1989; amd. Sec. 3, Ch. 489, L. 1991; amd. Sec. 5, Ch. 430, L. 1995; amd. Sec. 1, Ch. 91, L. 1997; amd. Sec. 1, Ch. 458, L. 1997; amd. Sec. 47, Ch. 257, L. 2001; amd. Sec. 34, Ch. 278, L. 2001; amd. Sec. 1, Ch. 272, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 272 in (3)(a) in first sentence substituted "the threshold dollar amount established by the director of the office of management and budget pursuant to 31 U.S.C. 7502(a)(3), but regardless of the source of revenue or financial assistance" for "\$200,000". Amendment effective October 1, 2007.

2-7-504. Accounting methods. (1) Unless otherwise required by law, the department shall prescribe by rule the general methods and details of accounting for the receipt and disbursement of all money belonging to local government entities and shall establish in those offices general methods and details of accounting. All local government entity officers shall conform with the accounting standards prescribed by the department.

(2) The rules adopted by the department must be in accordance with generally accepted accounting principles established by the governmental accounting standards board or its generally recognized successor.

History: En. 82-4530 by Sec. 16, Ch. 380, L. 1975; R.C.M. 1947, 82-4530; amd. Sec. 1, Ch. 1, Sp. L. June 1989; amd. Sec. 1, Ch. 11, Sp. L. June 1989; amd. Sec. 4, Ch. 489, L. 1991; amd. Sec. 6, Ch. 430, L. 1995; amd. Sec. 35, Ch. 278, L. 2001.

2-7-505. Audit scope and standards. (1) Each audit must be a comprehensive audit of the affairs of the local government entity and must be made in accordance with auditing standards and in accordance with federal regulations adopted by the department by rule.

(2) The department, with cooperation from state agencies, shall prepare a local government compliance supplement that contains state and federal regulations applicable to local government entities. Auditors shall use the compliance supplement adopted pursuant to this section in conjunction with government auditing standards adopted by the department to determine the compliance testing to be performed during an audit.

(3) When auditing a county or a consolidated government, auditors shall perform tests for compliance with state laws relating to receipts and disbursements of agency funds maintained by the entity. Findings related to compliance tests must be reported in accordance with the reporting standards for financial audits prescribed in government auditing standards adopted by the department.

History: En. 82-4518 by Sec. 4, Ch. 380, L. 1975; R.C.M. 1947, 82-4518; amd. Sec. 2, Ch. 573, L. 1981; amd. Sec. 5, Ch. 489, L. 1991; amd. Sec. 36, Ch. 278, L. 2001.

2-7-506. Audit by independent auditor. (1) The department may prepare and maintain a roster of independent auditors authorized to conduct audits of local government entities. The roster must be available to local government entities subject to the reporting requirements of 2-7-503.

(2) The department, in consultation with the board, shall adopt rules governing the:

- (a) criteria for the selection of the independent auditor;
- (b) procedures and qualifications for placing applicants on the roster;
- (c) procedures for reviewing the qualifications of independent auditors on the roster to justify their continuance on the roster; and
- (d) fees payable to the department for application for placement on the roster.

(3) An audit made by an independent auditor must be pursuant to a contract entered into by the governing body or managing or executive officer of the local government. The department must be a party to the contract and the contract may not be executed until it is signed by the department. All contracts for conducting audits must be in a form prescribed or approved by the department.

(4) The department shall notify the local government entity of a required audit, the date the report is due, and the requirement that the local government entity, the independent auditor, and the department must be parties to the contract.

(5) If a local government entity fails to present a signed contract to the department for approval within 90 days of receipt of the audit notice, the department shall designate an independent auditor to perform the audit. The costs incurred by the department in arranging the audit must be paid by the local government entity to the department in the manner of other claims against the local government entity.

History: En. 82-4525 by Sec. 11, Ch. 380, L. 1975; R.C.M. 1947, 82-4525; amd. Sec. 3, Ch. 573, L. 1981; amd. Sec. 1, Ch. 260, L. 1989; amd. Sec. 6, Ch. 489, L. 1991.

2-7-507. Duty of officers to aid in audit. The officers and employees of the local government entities referred to in this part shall provide all reasonable facilities for the audit and shall furnish all information to the independent auditor necessary for the conduct of the audit.

History: En. 82-4527 by Sec. 13, Ch. 380, L. 1975; R.C.M. 1947, 82-4527; amd. Sec. 7, Ch. 489, L. 1991.

2-7-508. Power to examine books and papers. The independent auditor may examine any books, papers, accounts, and documents in the office or possession of any local government entity.

History: En. 82-4528 by Sec. 14, Ch. 380, L. 1975; R.C.M. 1947, 82-4528; amd. Sec. 8, Ch. 489, L. 1991.

2-7-509. Audits of school-related organizations — costs — criteria. (1) The legislative auditor may conduct or have conducted an audit of the records of organizations referred to in 2-3-203(2).

(2) Before public funds are transferred to the organization, a member shall obtain the organization's written consent to:

(a) the audit provided for in subsection (1); and

(b) pay the costs of the audit.

(3) An audit of an organization performed under this section must determine if:

(a) the organization is carrying out only those activities or programs authorized by state law and its articles of incorporation, bylaws, and policies;

(b) expenditures are made in furtherance of authorized activities in accordance with applicable laws and its articles of incorporation, bylaws, and policies;

(c) the organization properly collects and accounts for all revenues and receipts arising from its activities in accordance with generally accepted accounting principles;

(d) the assets of the organization or the assets in its custody are adequately safeguarded and are controlled and used in an efficient manner; and

(e) reports and financial statements fully disclose the nature and scope of the activities conducted and provide a proper basis for evaluating the operations of the organization.

History: En. Sec. 1, Ch. 678, L. 1991.

2-7-510 reserved.

2-7-511. Access to public accounts — suspension of officer in case of discrepancy.

(1) The independent auditor may count the cash, verify the bank accounts, and verify all accounts of a public officer whose accounts the independent auditor is examining under law.

(2) If an officer of any county, city, town, school, or other local government entity refuses to provide the independent auditor access during an audit of the officer's accounts to cash, bank accounts, or any of the papers, vouchers, or records of that office or if the independent auditor finds a shortage of cash, the independent auditor shall immediately file a preliminary report showing the refusal of that officer or the existence of the shortage and the approximate amount of the shortage with the respective county, city, or town attorney and the governing body of the local government entity.

(3) Upon filing of the statement, the officer of the local government entity shall after notice and the opportunity for a hearing be suspended from the duties and emoluments of office and the governing body of the local government entity shall appoint a qualified person to the office pending completion of the audit.

(4) Upon the completion of the audit by the independent auditor, if a shortage of cash existed in the accounts of the officer, the independent auditor shall notify the governing body of the local government entity of the shortage.

(5) If the governing body finds that a shortage exists and that the officer suspended is, by act or omission, responsible for the shortage, the officer's right to the office is forfeited and the report of the audit must be referred to the county attorney.

History: En. 82-4526 by Sec. 12, Ch. 380, L. 1975; R.C.M. 1947, 82-4526; amd. Sec. 1, Ch. 43, L. 1981; amd. Sec. 9, Ch. 489, L. 1991; amd. Sec. 52, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-7-512. Exit review conference. Upon completion of each audit, the independent auditor is required to hold with the appropriate officials an exit review conference in which the audit results must be discussed.

History: En. 82-4519 by Sec. 5, Ch. 380, L. 1975; R.C.M. 1947, 82-4519; amd. Sec. 10, Ch. 489, L. 1991.

2-7-513. Content of audit report and financial report. (1) The audit reports must comply with the reporting requirements of government auditing standards issued by the U.S. comptroller general and federal regulations adopted by department rule.

(2) The department shall prescribe general methods and details of accounting for the financial report for local government entities other than schools. The financial report must be submitted in a form required by the department. The superintendent of public instruction shall prescribe the general methods and details of accounting for financial reports for schools.

History: En. 82-4520 by Sec. 6, Ch. 380, L. 1975; R.C.M. 1947, 82-4520; amd. Sec. 11, Ch. 489, L. 1991; amd. Sec. 7, Ch. 430, L. 1995; amd. Sec. 37, Ch. 278, L. 2001.

2-7-514. Filing of audit report and financial report. (1) Completed audit reports must be filed with the department. Completed financial reports must be filed with the department as provided in 2-7-503(1). The state superintendent of public instruction shall file with the department a list of school districts subject to audit under 2-7-503(3). The list must be filed with the department within 6 months after the close of the fiscal year.

(2) At the time that the financial report is filed or, in the case of a school district, when the audit report is filed with the department, the local government entity shall pay to the department a filing fee. The department shall charge a filing fee to any local government entity required to have an audit under 2-7-503, which fee must be based upon the costs incurred by the department in the administration of this part. Notwithstanding the provisions of 20-9-343, the filing fees for school districts required by this section must be paid by the office of public instruction. The department shall adopt the fee schedule by rule based upon the local government entities' revenue amounts.

(3) Copies of the completed audit and financial reports must be made available by the department and the local government entity for public inspection during regular office hours.

History: En. 82-4521 by Sec. 7, Ch. 380, L. 1975; R.C.M. 1947, 82-4521(1), (3); amd. Sec. 1, Ch. 169, L. 1985; amd. Sec. 2, Ch. 140, L. 1989; amd. Sec. 12, Ch. 489, L. 1991; amd. Sec. 1, Ch. 509, L. 1995.

2-7-515. Actions by governing bodies. (1) Upon receipt of the audit report, the governing bodies of each audited local government entity shall review the contents and within 30 days shall notify the department in writing as to what action they plan to take on any deficiencies or recommendations contained in the audit report. If no deficiencies or recommendations appear in the audit report, notification is not required.

(2) Notification to the department shall include a statement by the governing bodies that noted deficiencies or recommendations for improvement have been acted upon by adoption as recommended, adoption with modification, or rejection.

(3) The local government entity shall adopt measures to correct the report findings and submit a copy of the corrective action plan to the department and, if the local government entity is a school district, shall also send a copy to the superintendent of public instruction. The department shall notify the entity of the acceptance of the corrective measures. If the

department and the local government entity fail to agree, a conference between the parties must be held. Failure to resolve findings or implement corrective measures shall result in the withholding of financial assistance in accordance with rules adopted by the department pending resolution or compliance.

(4) In cases where a violation of law or nonperformance of duty is found on the part of an officer, employee, or board, the officer, employee, or board must be proceeded against by the attorney general or county, city, or town attorney as provided by law. If a written request to do so is received from the department, the county, city, or town attorney shall report the proceedings instituted or to be instituted, relating to the violations of law and nonperformance of duty, to the department within 30 days after receiving the request. If the county, city, or town attorney fails or refuses to prosecute the case, the department may refer the case to the attorney general to prosecute the case at the expense of the local government entity.

History: En. 82-4521, 82-4522 by Secs. 7, 8, Ch. 380, L. 1975; R.C.M. 1947, 82-4521(2), 82-4522; amd. Sec. 1, Ch. 128, L. 1991; amd. Sec. 13, Ch. 489, L. 1991.

2-7-516. Audit fees. (1) The compensation to the independent auditor for conducting an audit must be agreed upon by the governing body or managing or executive officer of the local government entity and the independent auditor and must be paid in the manner that other claims against the local government entity are paid.

(2) The compensation for an audit conducted by the department must be paid by the local government entity to the state treasurer and be deposited in an enterprise fund to the credit of the department.

History: En. 82-4524 by Sec. 10, Ch. 380, L. 1975; R.C.M. 1947, 82-4524; amd. Sec. 4, Ch. 573, L. 1981; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 14, Ch. 489, L. 1991.

2-7-517. Penalty. (1) When a local government entity has failed to file a report as required by 2-7-503(1), unless an extension has been granted by the department for good cause shown, or to make the payment required by 2-7-514(2) within 60 days, the department may issue an order stopping payment of any state financial assistance to the local government entity or may charge a late payment penalty as adopted by rule. Upon receipt of the report or payment of the filing fee, all financial assistance that was withheld under this section must be released and paid to the local government entity.

(2) When a local government entity has failed to make payment as required by 2-7-516 within 60 days of receiving a bill for an audit, the department may issue an order stopping payment of any state financial aid to the local government entity. Upon payment for the audit, all financial aid that was withheld because of failure to make payment must be released and paid to the local government entity.

History: En. Sec. 6, Ch. 573, L. 1981; amd. Sec. 3, Ch. 3, L. 1985; amd. Sec. 15, Ch. 489, L. 1991; amd. Sec. 7, Ch. 42, L. 1997.

2-7-518. Deposit of fees. All fees received from local government entities must be deposited in the enterprise fund to the credit of the department of administration for administration of Title 2, chapter 7, part 5.

History: En. Sec. 7, Ch. 573, L. 1981; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 16, Ch. 489, L. 1991; amd. Sec. 9, Ch. 483, L. 2001.

2-7-519 and 2-7-520 reserved.

2-7-521. Publication. (1) (a) After the expiration of the 30-day period provided for in 2-7-515(1), the local government entity shall send a copy of each audit report to a newspaper of general circulation in the area of the local government entity. However, each county audit report must be sent to the official newspaper of the county.

(b) For an audit report of a county or an incorporated city or town, the county, city, or town shall send to the appropriate newspaper a copy of a summary of significant findings regarding the audit report. The summary, which may not exceed 800 words, must be prepared by the independent auditor and contain a statement indicating that it is only a summary and is not intended to be used as an audit report.

(2) For an audit report of a county or incorporated city or town, a newspaper is required to publish only:

(a) the summary of significant findings provided for in subsection (1)(b); and

(b) a statement to the effect that the audit report is on file in its entirety and open to public inspection.

(3) For an audit report of a local government entity other than a county or incorporated city or town, the newspaper is required to publish only the statement provided for in subsection (2)(b) and a statement providing that the audited local government entity will send a copy of the audit report to any interested person upon request.

(4) Publication costs must be borne by the audited local government entity.

History: En. 82-4523 by Sec. 9, Ch. 380, L. 1975; R.C.M. 1947, 82-4523; amd. Sec. 1, Ch. 386, L. 1983; amd. Sec. 3, Ch. 140, L. 1989; amd. Sec. 1, Ch. 607, L. 1989; amd. Sec. 17, Ch. 489, L. 1991.

2-7-522. Report review. (1) The department shall determine whether the provisions of this part have been complied with by the independent auditor.

(2) Upon receipt of the audit report from the local government entity the department shall review the report. If the department determines the reporting requirements have not been met, the department shall notify the local government entity and the independent auditor submitting the report of the significant issues of noncompliance. The notification must include issuance of a statement of deficiencies by the department. The department shall allow the independent auditor 60 days to correct the identified deficiencies.

(3) If the corrections are not made within 60 days of the department's notice, the department shall notify the local government entity that the report has not been received. Failure to submit a report shall result in the withholding of payment of the audit fee pending resolution of the identified deficiencies or receipt of a corrected report.

(4) Upon review of the report, if the department determines the independent auditor has issued a report that fails to meet the auditing standards referred to in 2-7-513 or contains false or misleading information, the department shall notify the board.

(5) The department shall review the audit report findings and the response of the governing body or executive or managing officer of the local government entity submitted under 2-7-515. When the findings concern financial assistance, the department shall notify the state agency that is responsible for disbursing the state or federal funding.

(6) The department must have access in its office to the working papers of the independent auditor.

History: En. Sec. 18, Ch. 489, L. 1991.

CHAPTER 9 LIABILITY EXPOSURE AND INSURANCE COVERAGE

Part 1 Liability Exposure

2-9-101. Definitions. As used in parts 1 through 3 of this chapter, the following definitions apply:

(1) "Claim" means any claim against a governmental entity, for money damages only, that any person is legally entitled to recover as damages because of personal injury or property damage caused by a negligent or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of employment, under circumstances where the governmental entity, if a private person, would be liable to the claimant for the damages under the laws of the state. For purposes of this section and the limit of liability contained in 2-9-108, all claims that arise or derive from personal injury to or death of a single person, or damage to property of a person, regardless of the number of persons or entities claiming damages, are considered one claim.

(2) (a) "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or without compensation.

(b) The term does not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which parts 1 through 3 apply in the event of a claim.

(3) “Governmental entity” means the state and political subdivisions.

(4) “Personal injury” means any injury resulting from libel, slander, malicious prosecution, or false arrest and any bodily injury, sickness, disease, or death sustained by any person and caused by an occurrence for which the state may be held liable.

(5) “Political subdivision” means any county, city, municipal corporation, school district, special improvement or taxing district, or other political subdivision or public corporation.

(6) “Property damage” means injury or destruction to tangible property, including loss of use of the property, caused by an occurrence for which the state may be held liable.

(7) “State” means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.

History: (1)En. Sec. 2, Ch. 380, L. 1973; Sec. 82-4302, R.C.M. 1947; (2)En. 82-4334 by Sec. 8, Ch. 189, L. 1977; Sec. 82-4334, R.C.M. 1947; R.C.M. 1947, 82-4302, 82-4334(3); amd. Sec. 3, Ch. 675, L. 1983; amd. Sec. 1, Ch. 389, L. 1985; amd. Secs. 1, 3, Ch. 22, Sp. L. June 1986; amd. Sec. 54, Ch. 61, L. 2007.

Compiler’s Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-9-102. Governmental entities liable for torts except as specifically provided by legislature. Every governmental entity is subject to liability for its torts and those of its employees acting within the scope of their employment or duties whether arising out of a governmental or proprietary function except as specifically provided by the legislature under Article II, section 18, of The Constitution of the State of Montana.

History: En. Sec. 10, Ch. 380, L. 1973; amd. Sec. 1, Ch. 189, L. 1977; R.C.M. 1947, 82-4310.

2-9-103. Actions under invalid law or rule — same as if valid — when. (1) If an officer, agent, or employee of a governmental entity acts in good faith, without malice or corruption, and under the authority of law and that law is subsequently declared invalid as in conflict with the constitution of Montana or the constitution of the United States, that officer, agent, or employee, any other officer, agent, or employee of the represented governmental entity, or the governmental entity is not civilly liable in any action in which the individuals or governmental entity would not have been liable if the law had been valid.

(2) If an officer, agent, or employee of a governmental entity acts in good faith, without malice or corruption, and under the authority of a duly promulgated rule or ordinance and that rule or ordinance is subsequently declared invalid, that officer, agent, or employee, any other officer, agent, or employee of the represented governmental entity, or the governmental entity is not civilly liable in any action in which liability would not attach if the rule or ordinance had been valid.

History: En. 82-4333 by Sec. 7, Ch. 189, L. 1977; R.C.M. 1947, 82-4333; amd. Sec. 7, Ch. 184, L. 1979; amd. Sec. 55, Ch. 61, L. 2007.

Compiler’s Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-9-105. State or other governmental entity immune from exemplary and punitive damages. The state and other governmental entities are immune from exemplary and punitive damages.

History: En. 82-4332 by Sec. 6, Ch. 189, L. 1977; R.C.M. 1947, 82-4332.

2-9-108. Limitation on governmental liability for damages in tort. (1) The state, a county, municipality, taxing district, or any other political subdivision of the state is not liable in tort action for damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of \$750,000 for each claim and \$1.5 million for each occurrence.

(2) The state, a county, municipality, taxing district, or any other political subdivision of the state is not liable in tort action for damages suffered as a result of negligence of an officer, agent, or employee of that entity by a person while the person was confined in or was otherwise in or on the premises of a correctional or detention institution or facility to serve a sentence imposed upon conviction of a criminal offense. The immunity granted by this subsection does not extend to serious bodily injury or death resulting from negligence or to damages resulting from medical

malpractice, gross negligence, willful or wanton misconduct, or an intentional tort. This subsection does not create an exception from the dollar limitations provided for in subsection (1).

(3) An insurer is not liable for excess damages unless the insurer specifically agrees by written endorsement to provide coverage to the governmental agency involved in amounts in excess of a limitation stated in this section, in which case the insurer may not claim the benefits of the limitation specifically waived.

History: En. Sec. 2, Ch. 22, Sp. L. June 1986; amd. Sec. 1, Ch. 337, L. 1997.

2-9-109 and 2-9-110 reserved.

2-9-111. Immunity from suit for legislative acts and omissions. (1) As used in this section:

(a) the term “governmental entity” means only the state, counties, municipalities, school districts, and any other local government entity or local political subdivision vested with legislative power by statute;

(b) the term “legislative body” means only the legislature vested with legislative power by Article V of The Constitution of the State of Montana and that branch or portion of any other local governmental entity or local political subdivision empowered by law to consider and enact statutes, charters, ordinances, orders, rules, policies, resolutions, or resolves;

(c) (i) the term “legislative act” means:

(A) actions by a legislative body that result in creation of law or declaration of public policy;

(B) other actions of the legislature authorized by Article V of The Constitution of the State of Montana; or

(C) actions by a school board that result in adoption of school board policies pursuant to 20-3-323(1);

(ii) the term legislative act does not include administrative actions undertaken in the execution of a law or public policy.

(2) A governmental entity is immune from suit for a legislative act or omission by its legislative body, or any member or staff of the legislative body, engaged in legislative acts.

(3) Any member or staff of a legislative body is immune from suit for damages arising from the lawful discharge of an official duty associated with legislative acts of the legislative body.

(4) The acquisition of insurance coverage, including self-insurance or group self-insurance, by a governmental entity does not waive the immunity provided by this section.

(5) The immunity provided for in this section does not extend to:

(a) any tort committed by the use of a motor vehicle, aircraft, or other means of transportation; or

(b) any act or omission that results in or contributes to personal injury or property damage caused by contamination or other alteration of the physical, chemical, or biological properties of surface water or ground water, for which a cause of action exists in statutory or common law or at equity. This subsection (b) does not create a separate or new cause of action.

History: En. 82-4328 by Sec. 2, Ch. 189, L. 1977; R.C.M. 1947, 82-4328; amd. Sec. 1, Ch. 818, L. 1991; amd. Sec. 1, Ch. 821, L. 1991.

2-9-112. Immunity from suit for judicial acts and omissions. (1) The state and other governmental units are immune from suit for acts or omissions of the judiciary.

(2) A member, officer, or agent of the judiciary is immune from suit for damages arising from the lawful discharge of an official duty associated with judicial actions of the court.

(3) The judiciary includes those courts established in accordance with Article VII of The Constitution of the State of Montana.

History: En. 82-4329 by Sec. 3, Ch. 189, L. 1977; R.C.M. 1947, 82-4329; amd. Sec. 56, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-9-113. Immunity from suit for certain gubernatorial actions. The state and the governor are immune from suit for damages arising from the lawful discharge of an official duty associated with vetoing or approving bills or in calling sessions of the legislature.

History: En. 82-4330 by Sec. 4, Ch. 189, L. 1977; R.C.M. 1947, 82-4330.

2-9-114. Immunity from suit for certain actions by local elected executives. A local governmental entity and the elected executive officer thereof are immune from suit for damages

arising from the lawful discharge of an official duty associated with vetoing or approving ordinances or other legislative acts or in calling sessions of the legislative body.

History: En. 82-4331 by Sec. 5, Ch. 189, L. 1977; R.C.M. 1947, 82-4331.

Part 2

Comprehensive State Insurance Plan

2-9-201. Comprehensive insurance plan for state. (1) The department of administration is responsible for the acquisition and administration of all the insurance purchased for protection of the state, as defined in 2-9-101.

(2) The department of administration shall, after consultation with the departments, agencies, commissions, and other instrumentalities of the state, provide a comprehensive insurance plan for the state providing insurance coverage to the state in amounts determined and set by the department of administration and may purchase, renew, cancel, and modify all policies according to the comprehensive insurance plan. The plan may include property, casualty, liability, crime, fidelity, and any such other policies of insurance as the department of administration may from time to time deem reasonable and prudent.

(3) The department of administration may in its discretion elect to utilize a deductible insurance plan, either wholly or in part.

(4) Only the department of administration may procure insurance under parts 1 through 3 of this chapter except as otherwise provided herein.

(5) All offices, departments, agencies, authorities, commissions, boards, institutions, hospitals, colleges, universities, and other instrumentalities of the state hereafter called state participants shall comply with parts 1 through 3 and the insurance plan developed by the department of administration.

History: (1) thru (3) En. Sec. 3, Ch. 380, L. 1973; amd. Sec. 1, Ch. 143, L. 1974; amd. Sec. 1, Ch. 360, L. 1977; Sec. 82-4303, R.C.M. 1947; (4), (5) En. Sec. 4, Ch. 380, L. 1973; Sec. 82-4304, R.C.M. 1947; R.C.M. 1947, 82-4303, 82-4304.

2-9-202. Apportionment of costs — creation of deductible reserve. (1) The department of administration shall apportion the costs of all insurance purchased under 2-9-201 to the individual state participants, and the costs must be paid to the department subject to appropriations by the legislature.

(2) The department, if it elects to use a deductible insurance plan, is authorized to charge the individual state participants an amount equal to the cost of a full-coverage insurance plan until such time as a deductible reserve is established. In each subsequent year, the department may charge a sufficient amount over the actual cost of the deductible insurance to replenish the deductible reserves.

(3) The department may accumulate a self-insurance reserve fund sufficient to provide self-insurance for all liability coverages that in its discretion the department considers should be self-insured. Payments into the self-insurance reserve fund must be made from a legislative appropriation for that purpose. Proceeds of the fund must be used by the department to pay claims under parts 1 through 3 of this chapter. Expenditures for actual and necessary expenses required for the efficient administration of the fund must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

(4) Money in reserve funds established under this section that is not needed to meet expected expenditures must be invested and all proceeds of the investment credited to the fund.

History: En. Sec. 5, Ch. 380, L. 1973; amd. Sec. 2, Ch. 360, L. 1977; R.C.M. 1947, 82-4305; amd. Sec. 3, Ch. 703, L. 1985; amd. Sec. 1, Ch. 532, L. 1997.

2-9-203 through 2-9-210 reserved.

2-9-211. Political subdivision insurance. (1) All political subdivisions of the state may procure insurance separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part. Political subdivisions that elect to procure insurance jointly (pooled fund) under this section may obtain excess coverage from a surplus lines insurer without proceeding under the provisions of 33-2-302(1)(b) through (1)(d). Political subdivisions that are not in a pooled fund may obtain excess coverage from a surplus lines insurer without

proceeding under the provisions of 33-2-302(1)(b) through (1)(d) only if the insurer carries an A rating or better by a nationally recognized rating company or is a Lloyd's of London underwriter.

(2) A political subdivision that elects to establish a deductible plan may establish a deductible reserve separately or jointly with other subdivisions.

(3) A political subdivision that elects to establish a self-insurance plan may accumulate a self-insurance reserve fund, separately or jointly with other subdivisions, sufficient to provide self-insurance for all liability coverages that, in its discretion, the political subdivision considers should be self-insured. Payments into the reserve fund must be made from local legislative appropriations for that purpose or from the proceeds of bonds or notes authorized by subsection (5). Proceeds of the fund may be used only to pay claims under parts 1 through 3 of this chapter and for actual and necessary expenses required for the efficient administration of the fund.

(4) Money in reserve funds established under this section not needed to meet expected expenditures must be invested, and all proceeds of the investment must be credited to the fund.

(5) A political subdivision may issue and sell its bonds or notes for purposes of funding a self-insurance or deductible reserve fund and costs incident to the reserve fund in an amount not exceeding 0.18% of the total assessed value of taxable property, determined as provided in 15-8-111, within the political subdivision as of the date of issuance. The bonds or notes must be authorized by resolution of the governing body, are payable from the taxes authorized by 2-9-212, may be sold at public or private sale, do not constitute debt within the meaning of any statutory debt limitation, and may contain other terms and provisions as the governing body determines. Two or more political subdivisions may agree pursuant to an interlocal agreement to exercise their respective borrowing powers under this section jointly and may authorize a joint board created pursuant to the agreement to exercise powers on their behalf.

History: En. Sec. 6, Ch. 380, L. 1973; amd. Sec. 3, Ch. 360, L. 1977; R.C.M. 1947, 82-4306; amd. Sec. 1, Ch. 3, Sp. L. March 1986; amd. Sec. 1, Ch. 68, L. 1995; amd. Sec. 1, Ch. 29, L. 2001; amd. Sec. 1, Ch. 191, L. 2005.

2-9-212. Political subdivision tax levy to pay premiums. (1) Subject to 15-10-420 and subsection (2) of this section, a political subdivision, except for a school district, may levy an annual property tax in the amount necessary to fund the premium for insurance, deductible reserve fund, and self-insurance reserve fund as authorized in this section and to pay the principal and interest on bonds or notes issued pursuant to 2-9-211(5).

(2) (a) If a political subdivision made contributions for group benefits under 2-18-703 on or before July 1, 2001, the increase in the political subdivision's property tax levy for the political subdivision's premium contributions for group benefits under 2-18-703 beyond the amount of contributions in effect at the beginning of the last fiscal year is not subject to the mill levy calculation limitation provided for in 15-10-420. Levies implemented under this section must be calculated separately from the mill levies calculated under 15-10-420 and are not subject to the inflation factor described in 15-10-420(1)(a). If tax-billing software is capable, the county treasurer shall list separately the cumulative mill levy or dollar amount on the tax notice sent to each taxpayer under 15-16-101(2). The amount must also be reported to the department of administration pursuant to 7-6-4003. The mill levy must be described as the permissive medical levy.

(b) Each year prior to implementing a levy under subsection (2)(a), after notice of the hearing given under 7-1-2121 or 7-1-4127, a public hearing must be held regarding any proposed increases.

(c) A levy under this section in the previous year may not be included in the amount of property taxes that a governmental entity is authorized to levy for the purposes of determining the amount that the governmental entity may assess under the provisions of 15-10-420(1)(a). When a levy under this section decreases or is no longer levied, the revenue may not be combined with the revenue determined in 15-10-420(1)(a).

History: En. Sec. 9, Ch. 380, L. 1973; amd. Sec. 4, Ch. 360, L. 1977; R.C.M. 1947, 82-4309; amd. Sec. 2, Ch. 3, Sp. L. March 1986; amd. Sec. 1, Ch. 568, L. 1991; amd. Sec. 2, Ch. 584, L. 1999; amd. Sec. 1, Ch. 511, L. 2001; amd. Sec. 1, Ch. 529, L. 2003.

Part 3 Claims and Actions

2-9-301. Filing of claims against state and political subdivisions — disposition by state agency as prerequisite. (1) All claims against the state arising under the provisions of parts 1 through 3 of this chapter must be presented in writing to the department of administration.

(2) A complaint based on a claim subject to the provisions of subsection (1) may not be filed in district court unless the claimant has first presented the claim to the department of administration and the department has finally denied the claim. The department must grant or deny the claim in writing within 120 days after the claim is presented to the department. The failure of the department to make final disposition of a claim within 120 days after it is presented to the department must be considered a final denial of the claim for purposes of this subsection. Upon the department's receipt of the claim, the statute of limitations on the claim is tolled for 120 days. The provisions of this subsection do not apply to claims that may be asserted under Title 25, chapter 20, by third-party complaint, cross-claim, or counterclaim.

(3) All claims against a political subdivision arising under the provisions of parts 1 through 3 shall be presented to and filed with the clerk or secretary of the political subdivision.

History: (1)En. Sec. 11, Ch. 380, L. 1973; amd. Sec. 1, Ch. 361, L. 1975; amd. Sec. 5, Ch. 360, L. 1977; Sec. 82-4311, R.C.M. 1947; (2)En. Sec. 12, Ch. 380, L. 1973; amd. Sec. 6, Ch. 360, L. 1977; Sec. 82-4312, R.C.M. 1947; R.C.M. 1947, 82-4311, 82-4312; amd. Sec. 1, Ch. 507, L. 1987; amd. Sec. 1, Ch. 494, L. 1991.

2-9-302. Time for filing — limitation of actions. A claim against the state or a political subdivision is subject to the limitation of actions provided by law.

History: En. 82-4312.1 by Sec. 7, Ch. 360, L. 1977; R.C.M. 1947, 82-4312.1.

2-9-303. Compromise or settlement of claim against state. (1) The department of administration may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of insurance, if any. A settlement from the self-insurance reserve fund or deductible reserve fund exceeding \$10,000 must be approved by the district court of the first judicial district except when suit has been filed in another judicial district, in which case the presiding judge shall approve the compromise settlement.

(2) All terms, conditions, and details of the governmental portion of a compromise or settlement agreement entered into or approved pursuant to subsection (1) are public records available for public inspection unless a right of individual privacy clearly exceeds the merits of public disclosure.

History: En. Sec. 19, Ch. 380, L. 1973; amd. Sec. 9, Ch. 360, L. 1977; R.C.M. 1947, 82-4319; amd. Sec. 1, Ch. 63, L. 1981; amd. Sec. 1, Ch. 97, L. 1987; amd. Sec. 1, Ch. 111, L. 1987; amd. Sec. 1, Ch. 172, L. 2001.

2-9-304. Compromise or settlement of claim against political subdivision. (1) The governing body of each political subdivision, after conferring with its legal officer or counsel, may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of insurance, if any.

(2) All terms, conditions, and details of the governmental portion of a compromise or settlement agreement entered into pursuant to subsection (1) are public records available for public inspection unless a right of individual privacy clearly exceeds the merits of public disclosure.

History: En. Sec. 18, Ch. 380, L. 1973; amd. Sec. 8, Ch. 360, L. 1977; R.C.M. 1947, 82-4318; amd. Sec. 2, Ch. 111, L. 1987; amd. Sec. 1, Ch. 103, L. 1995; amd. Sec. 2, Ch. 172, L. 2001.

2-9-305. Immunization, defense, and indemnification of employees. (1) It is the purpose of this section to provide for the immunization, defense, and indemnification of public officers and employees civilly sued for their actions taken within the course and scope of their employment.

(2) In any noncriminal action brought against any employee of a state, county, city, town, or other governmental entity for a negligent act, error, or omission, including alleged violations of civil rights pursuant to 42 U.S.C. 1983, or other actionable conduct of the employee committed while acting within the course and scope of the employee's office or employment, the governmental entity employer, except as provided in subsection (6), shall defend the action on behalf of the employee and indemnify the employee.

(3) Upon receiving service of a summons and complaint in a noncriminal action against an employee, the employee shall give written notice to the employee's supervisor requesting that a defense to the action be provided by the governmental entity employer. If the employee is an elected state official or other employee who does not have a supervisor, the employee shall give notice of the action to the legal officer or agency of the governmental entity defending the entity in legal actions of that type. Except as provided in subsection (6), the employer shall offer a defense to the action on behalf of the employee. The defense may consist of a defense provided directly by the employer. The employer shall notify the employee, within 15 days after receipt of notice, whether a direct defense will be provided. If the employer refuses or is unable to provide a direct defense, the defendant employee may retain other counsel. Except as provided in subsection (6), the employer shall pay all expenses relating to the retained defense and pay any judgment for damages entered in the action that may be otherwise payable under this section.

(4) In any noncriminal action in which a governmental entity employee is a party defendant, the employee must be indemnified by the employer for any money judgments or legal expenses, including attorney fees either incurred by the employee or awarded to the claimant, or both, to which the employee may be subject as a result of the suit unless the employee's conduct falls within the exclusions provided in subsection (6).

(5) Recovery against a governmental entity under the provisions of parts 1 through 3 of this chapter constitutes a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, omission, or other actionable conduct gave rise to the claim. In an action against a governmental entity, the employee whose conduct gave rise to the suit is immune from liability by reasons of the same subject matter if the governmental entity acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee's employment, unless the claim constitutes an exclusion provided in subsections (6)(b) through (6)(d).

(6) In a noncriminal action in which a governmental entity employee is a party defendant, the employee may not be defended or indemnified by the employer for any money judgments or legal expenses, including attorney fees, to which the employee may be subject as a result of the suit if a judicial determination is made that:

(a) the conduct upon which the claim is based constitutes oppression, fraud, or malice or for any other reason does not arise out of the course and scope of the employee's employment;

(b) the conduct of the employee constitutes a criminal offense as defined in Title 45, chapters 4 through 7;

(c) the employee compromised or settled the claim without the consent of the government entity employer; or

(d) the employee failed or refused to cooperate reasonably in the defense of the case.

(7) If a judicial determination has not been made applying the exclusions provided in subsection (6), the governmental entity employer may determine whether those exclusions apply. However, if there is a dispute as to whether the exclusions of subsection (6) apply and the governmental entity employer concludes that it should clarify its obligation to the employee arising under this section by commencing a declaratory judgment action or other legal action, the employer is obligated to provide a defense or assume the cost of the defense of the employee until a final judgment is rendered in that action holding that the employer did not have an obligation to defend the employee. The governmental entity employer does not have an obligation to provide a defense to the employee in a declaratory judgment action or other legal action brought against the employee by the employer under this subsection.

History: (1)En. 82-4322.1 by Sec. 1, Ch. 239, L. 1974; Sec. 82-4322.1, R.C.M. 1947; (2) thru (4)En. Sec. 23, Ch. 380, L. 1973; amd. Sec. 2, Ch. 239, L. 1974; Sec. 82-4323, R.C.M. 1947; R.C.M. 1947, 82-4322.1, 82-4323; amd. Sec. 1, Ch. 530, L. 1983; amd. Sec. 57, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-9-306. Construction of policy conditions — customary exclusions. Any insurance policy, rider, or endorsement issued and purchased after July 1, 1973, to insure against any risk which may arise as a result of the application of parts 1 through 3 of this chapter which contains any condition or provision not in compliance with the requirements of parts 1 through 3 shall not

be rendered invalid thereby but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with parts 1 through 3, provided the policy is otherwise valid. This section may not be construed to prohibit any such insurance policy, rider, or endorsements from containing standard and customary exclusions of coverages that the department of administration considers reasonable and prudent upon considering the availability and the cost of such insurance coverages.

History: En. Sec. 8, Ch. 380, L. 1973; R.C.M. 1947, 82-4308; amd. Sec. 8, Ch. 184, L. 1979.

2-9-307 through 2-9-310 reserved.

2-9-311. Jurisdiction of district court — rules of procedure. The district court shall have jurisdiction over any action brought under parts 1 through 3 of this chapter, and such actions shall be governed by the Montana Rules of Civil Procedure insofar as they are consistent with such parts.

History: En. Sec. 20, Ch. 380, L. 1973; R.C.M. 1947, 82-4320.

2-9-312. Renumbered 25-2-126(1) and (3). Sec. 18(2), Ch. 432, L. 1985.

2-9-313. Service of process on state. In all actions against the state arising under this chapter, the state must be named the defendant and the summons and complaint must be served on the director of the department of administration in addition to service required by Rule 4D(2)(h), M.R.Civ.P. The state shall serve an answer within 40 days after service of the summons and complaint.

History: En. Sec. 22, Ch. 380, L. 1973; R.C.M. 1947, 82-4322; amd. Sec. 1, Ch. 604, L. 1979; amd. Sec. 1, Ch. 3, L. 1993.

2-9-314. Court approval of attorney fees. (1) When an attorney represents or acts on behalf of a claimant or any other party on a tort claim against the state or a political subdivision of the state, the attorney shall file with the claim a copy of the contract of employment showing specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The district court may regulate the amount of the attorney fees in any tort claim against the state or a political subdivision of the state. In regulating the amount of the fees, the court shall consider the time the attorney was required to spend on the case, the complexity of the case, and any other relevant matter the court may consider appropriate.

(3) Attorney fees regulated under this section must be made a part of the court record and are open to the public.

(4) If an attorney violates a provision of this section, a rule of court adopted under this section, or an order fixing attorney fees under this section, the attorney forfeits the right to any fees that the attorney may have collected or been entitled to collect.

History: En. 82-4316.1 by Sec. 1, Ch. 188, L. 1977; R.C.M. 1947, 82-4316.1; amd. Sec. 58, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-9-315. Recovery from appropriations if no insurance. In the event no insurance has been procured by the state to pay a claim or judgment arising under the provisions of parts 1 through 3 of this chapter, the claim or judgment shall be paid from the next appropriation of the state instrumentality whose tortious conduct gave rise to the claim.

History: En. Sec. 25, Ch. 380, L. 1973; R.C.M. 1947, 82-4325.

2-9-316. Judgments against governmental entities. A political subdivision of the state shall satisfy a final judgment or settlement out of funds that may be available from the following sources:

- (1) insurance;
- (2) the general fund or any other funds legally available to the governing body;
- (3) a property tax, otherwise properly authorized by law, collected by a special levy authorized by law, in an amount necessary to pay any unpaid portion of the judgment or settlement;
- (4) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the payment of the judgment or settlement liability. The governing body

of a county, city, or school district may issue bonds pursuant to procedures established by law. Property taxes may be levied to amortize the bonds.

History: En. 82-4335 by Sec. 10, Ch. 360, L. 1977; R.C.M. 1947, 82-4335(1); amd. Sec. 3, Ch. 213, L. 1989; amd. Sec. 1, Ch. 23, L. 1999; amd. Sec. 38, Ch. 278, L. 2001; amd. Sec. 5, Ch. 574, L. 2001.

2-9-317. No interest if judgment paid within two years — exception. Except as provided in 18-1-404(1)(b), if a governmental entity pays a judgment within 2 years after the day on which the judgment is entered, no penalty or interest may be assessed against the governmental entity.

History: En. 82-4335 by Sec. 10, Ch. 360, L. 1977; R.C.M. 1947, 82-4335(2); amd. Sec. 2, Ch. 508, L. 1997.

2-9-318. Attachment and execution. No levy of attachment or writ of execution shall issue against any property of a governmental entity for the security or collection of any claim or judgment against any governmental entity under parts 1 through 3 of this chapter.

History: En. Sec. 28, Ch. 380, L. 1973; R.C.M. 1947, 82-4327.

Part 5 General Provisions Related to Official Bonds

2-9-501. Application — bonds excepted. The provisions of this part apply to the official bond of any executor, administrator, or guardian or to the bond or undertaking of any person when by law a bond or undertaking is required, except county, town, or township officers and state officers and employees.

History: En. Sec. 1084, Pol. C. 1895; amd. Sec. 7, p. 82, L. 1899; re-en. Sec. 412, Rev. C. 1907; re-en. Sec. 503, R.C.M. 1921; Cal. Pol. C. Sec. 981; amd. Sec. 1, Ch. 17, L. 1935; re-en. Sec. 503, R.C.M. 1935; amd. Sec. 7, Ch. 134, L. 1941; amd. Sec. 8, Ch. 177, L. 1965; R.C.M. 1947, 6-331; amd. Sec. 1, Ch. 209, L. 2005.

2-9-502. Bonds of deputies. Every officer or body appointing a deputy, clerk, or subordinate officer may require an official bond to be given by the person appointed and may fix the amount thereof.

History: En. Sec. 1088, Pol. C. 1895; re-en. Sec. 416, Rev. C. 1907; re-en. Sec. 507, R.C.M. 1921; Cal. Pol. C. Sec. 985; re-en. Sec. 507, R.C.M. 1935; R.C.M. 1947, 6-335.

2-9-503. Bond of appointee. Any person appointed to fill a vacancy, before entering upon the duties of the office, must give a bond corresponding in substance and form with the bond required of the officer originally elected or appointed, as herein provided.

History: En. Sec. 1074, Pol. C. 1895; re-en. Sec. 402, Rev. C. 1907; re-en. Sec. 493, R.C.M. 1921; Cal. Pol. C. Sec. 971; re-en. Sec. 493, R.C.M. 1935; R.C.M. 1947, 6-324.

2-9-504. Conditions, form, and signatures. (1) The condition of an official bond must be that the principal shall well, truly, and faithfully perform all official duties required of the principal by law and also any additional duties that may be imposed on the principal by any law of the state subsequently enacted and that the principal will account for, pay over, and deliver to the person or officer entitled to receive all money or other property that the principal receives as an officer.

(2) The principal and sureties upon an official bond are liable for the neglect, default, or misconduct in office of any deputy, clerk, or employee appointed or employed by the principal.

(3) Official bonds must be signed and executed by the principal and two or more sureties or by the principal and one or more surety companies organized under the laws of this state or licensed to do business in this state.

(4) Official bonds must be joint and several and made payable to the state of Montana in the amount and with the conditions required by this part or the law creating or regulating the duties of the office.

History: (1) thru (3) En. Sec. 1057, Pol. C. 1895; amd. Sec. 2, p. 79, L. 1899; re-en. Sec. 384, Rev. C. 1907; re-en. Sec. 475, R.C.M. 1921; Cal. Pol. C. Sec. 954; re-en. Sec. 475, R.C.M. 1935; Sec. 6-306, R.C.M. 1947; (4) En. Sec. 1061, Pol. C. 1895; re-en. Sec. 388, Rev. C. 1907; re-en. Sec. 479, R.C.M. 1921; Cal. Pol. C. Sec. 958; re-en. Sec. 479, R.C.M. 1935; Sec. 6-310, R.C.M. 1947; R.C.M. 1947, 6-306, 6-310; amd. Sec. 59, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-9-505. Bonds of receivers, assignees — payable to state. All bonds or undertakings given by trustees, receivers, assignees, or officers of a court in an action or proceeding for the faithful discharge of their duties, where it is not otherwise provided, must be in the name of and

payable to the state and, upon the order of the court where such action or proceeding is pending, may be prosecuted for the benefit of any and all interested therein.

History: En. Sec. 1085, Pol. C. 1895; re-en. Sec. 413, Rev. C. 1907; re-en. Sec. 504, R.C.M. 1921; Cal. Pol. C. Sec. 982; re-en. Sec. 504, R.C.M. 1935; R.C.M. 1947, 6-332.

2-9-506. Approval, filing, record, and custody. (1) The approval of every official bond must be endorsed thereon and signed by the officer approving the same. No officer with whom any official bond is required to be filed must file such bond until approved.

(2) Every official bond must be filed in the proper office within the time prescribed for filing the oath unless otherwise expressly provided by statute.

(3) Official bonds must be recorded in a book kept for the purpose and entitled "Record of Official Bonds".

(4) Every officer with whom official bonds are filed must carefully keep and preserve the same and give certified copies thereof to any person demanding the same upon being paid the same fees as are allowable by law for certified copies of papers in other cases.

History: (1)Ap. p. Sec. 1055, Pol. C. 1895; re-en. Sec. 382, Rev. C. 1907; re-en. Sec. 473, R.C.M. 1921; Cal. Pol. C. Sec. 952; re-en. Sec. 473, R.C.M. 1935; Sec. 6-304, R.C.M. 1947; Ap. p. Sec. 1056, Pol. C. 1895; re-en. Sec. 383, Rev. C. 1907; re-en. Sec. 474, R.C.M. 1921; Cal. Pol. C. Sec. 953; re-en. Sec. 474, R.C.M. 1935; Sec. 6-305, R.C.M. 1947; (2)En. Sec. 1050, Pol. C. 1895; re-en. Sec. 377, Rev. C. 1907; re-en. Sec. 468, R.C.M. 1921; Cal. Pol. C. Sec. 947; re-en. Sec. 468, R.C.M. 1935; Sec. 6-301, R.C.M. 1947; (3)En. Sec. 1054, Pol. C. 1895; re-en. Sec. 381, Rev. C. 1907; re-en. Sec. 472, R.C.M. 1921; Cal. Pol. C. Sec. 951; re-en. Sec. 472, R.C.M. 1935; Sec. 6-303, R.C.M. 1947; (4)En. Sec. 1060, Pol. C. 1895; re-en. Sec. 387, Rev. C. 1907; re-en. Sec. 478, R.C.M. 1921; Cal. Pol. C. Sec. 957; re-en. Sec. 478, R.C.M. 1935; Sec. 6-309, R.C.M. 1947; R.C.M. 1947, 6-301, 6-303, 6-304, 6-305, 6-309.

2-9-507. Sureties' qualifications. (1) The individual sureties on all official bonds shall justify, before an officer authorized to administer oaths, by an affidavit to the effect that they are residents and householders or freeholders within the state and that each is worth the sum for which the individual becomes surety in the bond over and above the individual's just debts and liabilities, exclusive of property exempt from execution.

(2) A surety company or corporation organized under or that has complied with the laws of this state and that has been duly licensed to do business in this state may not be required to justify as a surety. A company or corporation may not be accepted as a surety in a case when its liabilities exceed its assets, as ascertained in the manner provided by law.

(3) A member of the board of county commissioners may not be accepted as a surety upon the official bond of any county, township, or school district officer in the commissioner's county, and a county officer may not be a surety upon the official bond of any other county officer.

History: En. Sec. 1058, Pol. C. 1895; amd. Sec. 3, p. 80, L. 1899; re-en. Sec. 385, Rev. C. 1907; re-en. Sec. 476, R.C.M. 1921; Cal. Pol. C. Sec. 955; re-en. Sec. 476, R.C.M. 1935; R.C.M. 1947, 6-307; amd. Sec. 60, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-9-508 through 2-9-510 reserved.

2-9-511. Extent of sureties' liability — when less than full. (1) An official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties for any and all breaches of the conditions of the bond committed during the time the officer continues to discharge any of the duties of or hold the office and whether the breaches are committed or suffered by the principal officer or the officer's deputy or clerk.

(2) A surety bond is in force and obligatory upon the principal and sureties for the faithful discharge of all duties that may be required of the officer by any law enacted subsequently to the execution of the bond, and that condition must be expressed in the bond.

(3) When the penal sum of a bond required to be given amounts to more than \$1,000, the sureties may become severally liable for portions not less than \$500, making in the aggregate a liability of double the amount named as the penal sum of the bond. If a bond is forfeited, an action may be brought on the bond against any or all of the obligors and judgment may be entered against them, either jointly or severally, as they may be liable. The judgment may not be entered against a surety severally bound for a greater sum than that for which the surety is specially liable by the terms of the bond. Each surety is liable to contribute to the cosureties in proportion to the amount for which the surety is liable.

History: (1)En. Sec. 1062, Pol. C. 1895; re-en. Sec. 389, Rev. C. 1907; re-en. Sec. 480, R.C.M. 1921; Cal. Pol. C. Sec. 959; re-en. Sec. 480, R.C.M. 1935; Sec. 6-311, R.C.M. 1947; (2)En. Sec. 1063, Pol. C. 1895; re-en. Sec. 390, Rev. C. 1907; re-en. Sec. 481, R.C.M. 1921; Cal. Pol. C. Sec. 960; re-en. Sec. 481, R.C.M. 1935; Sec. 6-312, R.C.M. 1947; (3)En. Sec. 1059, Pol. C. 1895; amd. Sec. 1, p. 112, L. 1897; amd. Sec. 4, p. 80, L. 1899; re-en. Sec. 386, Rev. C. 1907; re-en. Sec. 477, R.C.M. 1921; Cal. Pol. C. Sec. 956; re-en. Sec. 477, R.C.M. 1935; Sec. 6-308, R.C.M. 1947; R.C.M. 1947, 6-308, 6-311, 6-312; amd. Sec. 61, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-9-512. Defects not to affect liability. (1) If an official bond does not contain the substantial matter or conditions required by law or there are any defects in the approval or filing of the bond, it is not void so as to discharge the officer and sureties. The sureties are equitably bound to the state or party interested, and the state or the party may, by action in any court of competent jurisdiction, suggest the defect in the bond, approval, or filing and recover the proper and equitable demand or damages from the officer and the persons who intended to become and were included as sureties in the bond.

(2) An official bond entered into by an officer or a bond, recognizance, or written undertaking taken by an officer in the discharge of the duties of office is not void for want of form, substance, recital, or condition or the principal or surety be discharged. The principal and surety must be bound by the bond, recognizance, or written undertaking to the full extent contemplated by the law requiring the bond and the sureties to the amount specified in the bond, recognizance, or written undertaking. In all actions on a defective bond, recognizance, or written undertaking, the plaintiff or relator may suggest the defect in the complaint and recover to the same extent as if the bond, recognizance, or written undertaking were perfect in all respects.

History: (1)En. Sec. 1066, Pol. C. 1895; re-en. Sec. 393, Rev. C. 1907; re-en. Sec. 484, R.C.M. 1921; Cal. Pol. C. Sec. 963; re-en. Sec. 484, R.C.M. 1935; Sec. 6-315, R.C.M. 1947; (2)En. Sec. 1, Ch. 193, L. 1907; re-en. Sec. 394, Rev. C. 1907; re-en. Sec. 485, R.C.M. 1921; re-en. Sec. 485, R.C.M. 1935; Sec. 6-316, R.C.M. 1947; R.C.M. 1947, 6-315, 6-316; amd. Sec. 62, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-9-513. Insufficiency of sureties — action to vacate office. (1) Whenever it is shown by the affidavit of a credible witness or otherwise comes to the knowledge of the court, judge, board, person, or body whose duty it is to approve the official bond of any officer that one or more sureties on a bond given pursuant to the provisions of this part have, since the bond was approved, died, left the state, become insolvent, or from any other cause have become incompetent or insufficient sureties on the bond, the court, judge, board, officer, or other person may issue a citation to the officer requiring the officer on a day named in the citation, not less than 5 or more than 10 days after the citation was issued, to appear and show cause why the office should not be vacated. The citation must be served and the return of the citation must be made as in other cases.

(2) If the officer fails to appear and show good cause why the office should not be vacated on the day named or fails to give ample additional security, the court, judge, board, officer, or other person shall make an order vacating the office. The office must be filled as provided by law.

History: En. Sec. 1067; Pol. C. 1895; amd. Sec. 5, p. 81, L. 1899; re-en. Sec. 395, Rev. C. 1907; re-en. Sec. 486, R.C.M. 1921. Cal. Pol. C. Sec. 964; re-en. Sec. 486, R.C.M. 1935; R.C.M. 1947, 6-317; amd. Sec. 63, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-9-514. Additional security. (1) The additional bond given pursuant to 2-9-513(2) must be in the penalty directed by the court, judge, board, officer, or other person and in all other respects similar to the original bond and approved by and filed with the same officer as required in case of the approval and filing of the original bond.

(2) Each additional bond filed and approved is of like force and obligation upon the principal and sureties from the time of its execution and subjects the officer and the sureties to the same liabilities, suits, and actions that are prescribed respecting the original bonds of officers.

(3) The original bond is not discharged or affected when an additional bond has been given, but the original bond remains of the same force and obligation as if the additional bond had not been given.

History: (1), (2) En. Sec. 1068, Pol. C. 1895; re-en. Sec. 396, Rev. C. 1907; re-en. Sec. 487, R.C.M. 1921; Cal. Pol. C. Sec. 965; re-en. Sec. 487, R.C.M. 1935; Sec. 6-318, R.C.M. 1947; (3) En. Sec. 1069, Pol. C. 1895; re-en. Sec. 397, Rev. C. 1907; re-en. Sec. 488, R.C.M. 1921; Cal. Pol. C. Sec. 966; re-en. Sec. 488, R.C.M. 1935; Sec. 6-319, R.C.M. 1947; R.C.M. 1947, 6-318, 6-319; amd. Sec. 9, Ch. 184, L. 1979; amd. Sec. 64, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-9-515. Additional security — liability of officers and sureties. The officer and the officer's sureties are liable to any party injured by the breach of any condition of an official bond, after the execution of the additional bond, upon either or both bonds. The injured party may bring an action upon either bond or may bring separate actions on the bonds respectively. The injured party may allege the same cause of action and may recover judgment in each suit.

History: En. Sec. 1070, Pol. C. 1895; re-en. Sec. 398, Rev. C. 1907; re-en. Sec. 489, R.C.M. 1921; Cal. Pol. C. Sec. 967; re-en. Sec. 489, R.C.M. 1935; R.C.M. 1947, 6-320; amd. Sec. 65, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-9-516. Separate judgments. If separate judgments are recovered on the surety bonds by an injured party for the same cause of action, the injured party is entitled to have execution issued on the judgments respectively but the injured party may collect, by execution or otherwise, only the amount actually adjudged on the same causes of action in one of the suits, together with the costs of both suits.

History: En. Sec. 1071, Pol. C. 1895; re-en. Sec. 399, Rev. C. 1907; re-en. Sec. 490, R.C.M. 1921; Cal. Pol. C. Sec. 968; re-en. Sec. 490, R.C.M. 1935; R.C.M. 1947, 6-321; amd. Sec. 66, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-9-517. Contribution between sureties. Whenever the sureties on either bond have been compelled to pay any sum of money on account of the principal obligor therein, they are entitled to recover in any court of competent jurisdiction of the sureties on the remaining bond a distributive part of the sum thus paid in the proportion which the penalties of such bonds bear one to the other and to the sums thus paid, respectively.

History: En. Sec. 1072, Pol. C. 1895; re-en. Sec. 400, Rev. C. 1907; re-en. Sec. 491, R.C.M. 1921; Cal. Pol. C. Sec. 969; re-en. Sec. 491, R.C.M. 1935; R.C.M. 1947, 6-322.

2-9-518 through 2-9-520 reserved.

2-9-521. Discharge of sureties. Whenever any sureties on the official bond of any officer wish to be discharged from their liability, they and such officer may procure the same to be done if such officer will execute a new bond in accordance with the provisions of this part in like form, penalty, and conditions, and to be approved and filed as the original bond. Upon the filing and approval of the new bond, such first sureties are exonerated from all further liability, but their bond remains in full force as to all liabilities incurred previous to the approval of such new bond. The liability of the principal and surety or sureties in such new bond is in all respects the same and may be enforced in like manner as the liability of the principal and sureties of the original bond.

History: En. Sec. 1073, Pol. C. 1895; amd. Sec. 6, p. 81, L. 1899; re-en. Sec. 401, Rev. C. 1907; re-en. Sec. 492, R.C.M. 1921; Cal. Pol. C. Sec. 970; re-en. Sec. 492, R.C.M. 1935; R.C.M. 1947, 6-323.

2-9-522. Release of sureties. Any surety on the official bond of any county, city, town, or township officer or on the official bond of any executor, administrator, guardian or on the bond or undertaking of any person where by law a bond or undertaking is required may be released from all liability thereon accruing from and after proper proceedings had therefor, as provided in this part.

History: En. Sec. 1075, Pol. C. 1895; re-en. Sec. 403, Rev. C. 1907; re-en. Sec. 494, R.C.M. 1921; Cal. Pol. C. Sec. 972; re-en. Sec. 494, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1941; amd. Sec. 6, Ch. 177, L. 1965; R.C.M. 1947, 6-325.

2-9-523. Proceedings to obtain release. (1) A surety desiring to be released from liability on the bond of any county or township officer shall file a statement in writing, duly subscribed by the surety or someone on the surety's behalf setting forth the name and office of the bonded person, the amount for which the surety is liable, and the surety's desire to be released from further liability on account of the bond.

(2) A notice containing the object of the statement must be served personally on the principal unless the principal has left the state or the principal's whereabouts cannot after due and diligent search and inquiry be ascertained, in which case the notice may be served by publication once a week for four successive publications in a newspaper of general circulation published in the county where the bond is filed on record. The statement, except when the county clerk and recorder or county commissioners are principals, must be filed with the county clerk and recorder. When the county clerk and recorder or county commissioners are principals, the statement must be filed with the district court judge.

(3) A surety desiring to be released from liability on the bond of any city or town officer shall file and serve a similar statement with the city or town clerk or mayor.

(4) A surety desiring to be released from an executor's, administrator's, or guardian's bond or undertaking shall file and serve a similar statement with the proper officer, person, or authority with whom the bond is filed on record.

(5) All statements provided for in this section must be served personally on the principal as provided in this section if the principal can be found for service in the state. If the principal cannot be found in the state, the principal may be served by publication in a newspaper as provided in subsection (2) or, if a newspaper is not published in that county, then in a newspaper published in an adjoining county, without any order from any court or other authority. In all cases for which publication is provided, a printed or written notice posted in at least 10 conspicuous places in the county for the time specified for publication of the notice is considered legal notice.

History: En. Sec. 2, Ch. 134, L. 1941; amd. Sec. 7, Ch. 177, L. 1965; R.C.M. 1947, 6-326; amd. Sec. 67, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-9-524. Amount of new bond — failure to file. (1) Whenever a statement is filed or filed and served as provided in this part, the proper authority shall prescribe the penalty or amount in which a new or additional bond or undertaking must be filed unless already provided by statute. If an order is not made, the new or additional bond or undertaking must be executed for the same amount as the original.

(2) If an officer or person fails to file a new or additional bond or undertaking within 20 days from the date of personal service or within 40 days from the date of the first publication or posting of notice as provided in this part, the office or appointment of the person or officer becomes vacant and the officer or person forfeits the office or appointment. The office or position must be filled as in other cases of vacancy and in the manner provided by law.

(3) The person applying to be released from liability on the bond or undertaking may not be held liable on the bond after the date provided for vacating and forfeiting of the office or appointment.

History: En. Secs. 3, 5, Ch. 134, L. 1941; R.C.M. 1947, 6-327, 6-329; amd. Sec. 68, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-9-525. Liability of sureties when new bond is given. In case a new or additional undertaking be filed, the sureties on the original undertaking not asking to be released and on the new or additional bond or undertaking shall be and continue liable for the official acts of such officer or person, jointly and severally, the same as if all were sureties on one and the same instrument. This shall not be deemed to provide retroactive liability on the new surety.

History: En. Sec. 4, Ch. 134, L. 1941; R.C.M. 1947, 6-328.

2-9-526. Effect of discharge of sureties. No surety must be released from damages or liabilities for acts, omissions, or causes existing or which arose before discharge of the surety as hereinbefore provided, but such legal proceedings may be had therefor in all respects as though no such discharge had been had.

History: En. Sec. 1083, Pol. C. 1895; re-en. Sec. 411, Rev. C. 1907; re-en. Sec. 502, R.C.M. 1921; Cal. Pol. C. Sec. 980; re-en. Sec. 502, R.C.M. 1935; amd. Sec. 6, Ch. 134, L. 1941; R.C.M. 1947, 6-330.

2-9-527. Suit on bonds. (1) An official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties to and for the state and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of the

officer in the officer's official capacity. A person injured or aggrieved may bring suit on the bond in the person's own name.

(2) A bond is not void on the first recovery of a judgment on the bond. Suit may be brought from time to time and judgment recovered on the bond by the state or by any person to whom a right of action has accrued against the officer and the sureties until the whole penalty of the bond is exhausted.

History: (1)En. Sec. 1064, Pol. C. 1895; re-en. Sec. 391, Rev. C. 1907; re-en. Sec. 482, R.C.M. 1921; Cal. Pol. C. Sec. 961; re-en. Sec. 482, R.C.M. 1935; Sec. 6-313, R.C.M. 1947; (2)En. Sec. 1065, Pol. C. 1895; re-en. Sec. 392, Rev. C. 1907; re-en. Sec. 483, R.C.M. 1921; Cal. Pol. C. Sec. 962; re-en. Sec. 483, R.C.M. 1935; Sec. 6-314, R.C.M. 1947; R.C.M. 1947, 6-313, 6-314; amd. Sec. 69, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-9-528. Lien on real estate of surety — action to compel specific performance. (1)

When an action is commenced in any court in this state, for the benefit to the state, to enforce the penalty of or to recover money upon an official bond or obligation or any bond or obligation executed in favor of the state of Montana or of the people of this state, the attorney or other person prosecuting the action may file with the clerk of the court in which the action is commenced an affidavit stating either positively or on information and belief that the bond or obligation was executed by the defendant or one or more of the defendants (designating whom) and made payable to the people of the state or to the state and that the defendant or defendants have real estate or some interest in land (designating the county or counties in which the land is situated) and that the action is prosecuted for the benefit of the state. The clerk of the court receiving the affidavit shall certify to the county clerk and recorder of the county in which the real estate is situated the names of the parties to the action, the name of the court in which the action is pending, and the amount claimed in the complaint, along with the date of the commencement of the suit.

(2) Upon receiving the certificate, the county clerk and recorder shall endorse upon the certificate the time of its receipt. The certificate must be filed in the same manner as notices of the pendency of action affecting real estate. Any judgment recovered in the action is a lien upon all real estate belonging to the defendant situated in any county in which the certificate is filed or to one or more of the defendants, for the amount the owner of the real estate is or may be liable upon the judgment, from the filing of this certificate.

(3) In any action to compel the specific performance of an agreement to sell real estate affected by the lien created by the filing of the certificate referred to in subsection (2), which agreement was made prior to the filing of the certificate but the purchase price of the real estate is not due until after the filing of the certificate, the judge of the district court in which the action for specific performance is tried shall, if the purchaser is otherwise entitled to specific performance of the agreement, order the purchaser to pay the purchase price or as much of the purchase price that may be due to the state treasurer, taking the state treasurer's receipt for the payment. Upon payment, the purchaser is entitled to enforce the specific performance of the agreement and take the real estate free from the liens created by the filing of the certificate. The money paid to the state treasurer must be held pending the litigation mentioned in the certificate and subject to the lien created by the filing of the certificate. If judgment is recovered against the defendant, the state treasurer in the treasurer's settlement shall pay to the county treasurer the amount due the county.

History: (1)En. Sec. 1086, Pol. C. 1895; re-en. Sec. 414, Rev. C. 1907; re-en. Sec. 505, R.C.M. 1921; Cal. Pol. C. Sec. 983; re-en. Sec. 505, R.C.M. 1935; Sec. 6-333, R.C.M. 1947; (2)En. Sec. 1087, Pol. C. 1895; re-en. Sec. 415, Rev. C. 1907; re-en. Sec. 506, R.C.M. 1921; Cal. Pol. C. Sec. 984; re-en. Sec. 506, R.C.M. 1935; Sec. 6-334, R.C.M. 1947; (3)En. Sec. 1090, Pol. C. 1895; re-en. Sec. 418, Rev. C. 1907; re-en. Sec. 509, R.C.M. 1921; Cal. Pol. C. Sec. 987; re-en. Sec. 509, R.C.M. 1935; Sec. 6-337, R.C.M. 1947; R.C.M. 1947, 6-333, 6-334, 6-337; amd. Sec. 70, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

**CHAPTER 11
LEGAL AUTHORITY
FOR GOVERNMENT ACTION****Part 1
Government Accountability Act**

2-11-101. Short title. This part may be cited as the “Government Accountability Act”.

History: En. Sec. 1, Ch. 502, L. 1997.

2-11-102. Findings and purpose. The purpose of this part is to require government entities to make known the legal authority upon which certain action is based. The benefits of this requirement will be that government officials will articulate and reaffirm their legal authority to act and that both the government and the people will have a fuller understanding of the limits of the law and the facts to which the law applies. This understanding will benefit both government and the people by helping to resolve disputes between government servants and the people, without lengthy and costly litigation, by instilling trust in government, and by helping to identify deficiencies in the law so that those deficiencies may be addressed by legislative action.

History: En. Sec. 2, Ch. 502, L. 1997.

2-11-103. Definitions. As used in this part, the following definitions apply:

(1) (a) “Government act” means the denial or issuance with conditions of a permit, certificate, license, or the equivalent of a permit, certificate, or license issued by a government entity.

(b) The term does not mean:

(i) litigation in which a government entity or other person litigates the authority of the government entity to take an act provided in subsection (1)(a);

(ii) an act provided in subsection (1)(a) for which a citation or warning is issued, other than the statement required by 2-11-104, on which a reference clearly appears to the legal authority for the government action; or

(iii) a legislative act by the state of Montana.

(2) “Government entity” means a state agency or a local government unit.

(3) “Local government unit” means a city, county, town, unincorporated municipality or village, or special taxing unit or district and any commission, board, bureau, or other office of the unit.

(4) “Rule” has the meaning provided in 2-4-102.

(5) “State agency” has the meaning provided in 2-4-102(2)(a).

(6) “Statement of government authority” or “statement” means the statement required by 2-11-104.

History: En. Sec. 3, Ch. 502, L. 1997; amd. Sec. 1, Ch. 51, L. 1999.

2-11-104. Statement of government authority required. (1) When a government entity takes a government act, as defined in 2-11-103, it shall provide upon request to the applicant a written statement of specific legal authority upon which the action is based. The statement must be provided within 30 days of the written request by the applicant for the written statement of specific legal authority or within 30 days after the government act, whichever occurs last.

(2) The statement must clearly cite the specific statute, rule, ordinance, resolution, or other legal authority for the government act and the specific reason for the government act.

History: En. Sec. 4, Ch. 502, L. 1997; amd. Sec. 1, Ch. 501, L. 2001.

CHAPTER 15 EXECUTIVE BRANCH OFFICERS AND AGENCIES

Part 7 Superintendent of Public Instruction

2-15-701. Superintendent of public instruction. There is a superintendent of public instruction as provided in Article VI, section 1, of the Montana constitution. The election, qualifications, and term of office of the superintendent are provided for in Title 20, chapter 3.

History: En. by Code Commissioner, 1979.

Part 10 Department of Administration

2-15-1009. Public employees' retirement board — terms — allocation. (1) There is a public employees' retirement board.

(2) The board consists of seven members appointed by the governor with the consent of the senate. The members are:

(a) three public employees who are active members of a public retirement system. Not more than one of these members may be an employee of the same department and at least one of these members must, no later than July 1, 2003, be a member of the defined contribution plan created pursuant to Title 19, chapter 3, part 21.

(b) one retired public employee who is a member of the public employees' retirement system;

(c) two members at large; and

(d) one member who has experience in investment management, counseling, or financial planning or who has other similar experience.

(3) The term of office for each member is 5 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. The board shall hire necessary employees as provided in 19-2-404.

(5) Members of the board must be compensated and receive travel expenses as provided for in 2-15-124.

History: En. 82A-210 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 9, Ch. 190, L. 1974; amd. Sec. 94, Ch. 326, L. 1974; amd. Sec. 3, Ch. 132, L. 1977; amd. Sec. 22, Ch. 453, L. 1977; R.C.M. 1947, 82A-210; amd. Sec. 1, Ch. 117, L. 1983; amd. Sec. 2, Ch. 650, L. 1985; amd. Sec. 2, Ch. 532, L. 1997; amd. Sec. 1, Ch. 471, L. 1999; amd. Sec. 1, Ch. 562, L. 1999; amd. Sec. 1, Ch. 68, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 68 in (2) at end of first sentence inserted "with the consent of the senate". Amendment effective March 27, 2007.

Applicability: Section 3, Ch. 68, L. 2007, provided: "[This act] applies to members of the public employees' retirement board appointed after [the effective date of this act]." Effective March 27, 2007.

2-15-1010. Teachers' retirement board — terms — allocation — definition. (1) There is a teachers' retirement board.

(2) The board consists of six members appointed by the governor, as follows:

(a) three persons appointed from the teaching profession who, when appointed, are active members of the retirement system. At least one of the three appointees must be actively employed as a public school classroom teacher and shall hold a class 1, 2, or 4 certificate pursuant to 20-4-106.

(b) two persons appointed as representatives of the public;

(c) one member who must be a retired teacher who was a member of the retirement system at the time of retirement.

(3) (a) Except as provided in subsection (3)(b), each appointed member of the board shall serve a term of 5 years. Each appointed member shall take and subscribe to the oath prescribed by Article III, section 3, of the Montana constitution. The oath must be filed in the office of the secretary of state.

(b) The first appointment of a member of the public after March 16, 2001, is for a 4-year term. After that appointment, each appointment of a member of the public is for a 5-year term.

(4) If a vacancy in an unexpired term occurs on the board, the governor shall appoint a person to fill the unexpired portion of the term.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(6) As used in this section, “classroom teacher” means a staff member who is assigned professional activities of instructing pupils in self-contained classes or courses or in classroom situations.

History: En. 82A-212 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 95, Ch. 326, L. 1974; amd. Sec. 1, Ch. 45, L. 1977; R.C.M. 1947, 82A-212; amd. Sec. 1, Ch. 388, L. 1997; amd. Sec. 1, Ch. 45, L. 2001.

Part 15 Education

2-15-1501. State board of education. The state board of education is created in Article X, section 9, subsection (1) of the Montana constitution and is provided for in Title 20, chapter 2.

History: En. 82A-501 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 4, Ch. 51, L. 1974; R.C.M. 1947, 82A-501.

2-15-1502 through 2-15-1504 reserved.

2-15-1505. Board of regents of higher education. The board of regents of higher education created in Article X, section 9, subsection (2), of the Montana constitution consists of seven members appointed by the governor and confirmed by the senate. The governor, superintendent of public instruction, and commissioner of higher education are ex officio nonvoting members of the board of regents.

History: En. Sec. 2, Ch. 344, L. 1973; R.C.M. 1947, 75-5610(2).

2-15-1506. Commissioner of higher education. (1) There is a commissioner of higher education who is appointed by the board of regents.

(2) The board of regents shall prescribe the term of the commissioner.

History: En. Sec. 3, Ch. 344, L. 1973; R.C.M. 1947, 75-5611(part).

2-15-1507. Board of public education. The board of public education created in Article X, section 9, subsection (3), of the Montana constitution consists of seven members appointed by the governor and confirmed by the senate. The governor, superintendent of public instruction, and commissioner of higher education are ex officio nonvoting members of the board of public education.

History: En. Sec. 2, Ch. 344, L. 1973; R.C.M. 1947, 75-5610(1).

2-15-1508. Appointments to board of public education and board of regents — conditions — vacancy. (1) Appointments to the board of public education and to the board of regents are subject to the following qualifications:

(a) Not more than four may be from one district provided for in 5-1-102.

(b) Not more than four may be affiliated with the same political party.

(c) The terms of members appointed to each board are 7 years except as provided in subsection (3).

(d) When a vacancy occurs, the governor shall appoint a member for the remainder of the term of the incumbent, and the appointment must preserve the balance required by subsections (1)(a) and (1)(b).

(e) A person may not be appointed to concurrent memberships on the board of public education and the board of regents.

(2) An appointed member of either board shall take and subscribe to the constitutional oath of office and file it with the secretary of state before the person may serve as a member of either board.

(3) (a) One seat of the appointed members on the board of regents is reserved for membership by a student appointed by the governor. The student must be registered as a full-time student at a unit of higher education under jurisdiction of the board of regents. The length of term of the student member is 1 year. The term begins July 1 and ends June 30. The student regent may be reappointed to succeeding terms subject to subsection (3)(b). The provisions of subsections (1)(a) and (1)(b) do not apply to the student member and may not affect the balance of the remaining appointive membership on the board of regents.

(b) The governor shall appoint the student provided for in subsection (3)(a) based upon a nomination provided by a student organization designated by the board of regents. The student organization shall nominate no fewer than three qualified students. If the governor finds that none of the students nominated are acceptable, the governor may request a new slate of nominees. Nominations must be forwarded to the governor in March immediately preceding the end of a regular term, and the governor shall make the appointment before the end of the succeeding June. In the event of a vacancy, a replacement must be appointed as soon as is practicable and in the same manner as the original appointment.

History: En. Secs. 2, 11, Ch. 344, L. 1973; R.C.M. 1947, 75-5610(part), 75-5619; amd. Sec. 1, Ch. 52, L. 1993; amd. Sec. 1, Ch. 206, L. 1999; amd. Sec. 1, Ch. 254, L. 2003; amd. Sec. 1, Ch. 120, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 120 in (3)(a) in third sentence after "member is" deleted "determined by the governor and must be for not less than" and after "1 year" deleted "and not more than 4 years", in fourth sentence after "June 30" deleted "of the years designated by the governor", and inserted fifth sentence concerning reappointment. Amendment effective July 1, 2007.

Applicability: Section 4, Ch. 120, L. 2007, provided: "[This act] applies to student regents appointed after [the effective date of this act]." Effective July 1, 2007.

2-15-1509 and 2-15-1510 reserved.

2-15-1511. Agencies allocated to state board of education. The state historical society, the Montana arts council, and the state library commission are allocated to the state board of education for purposes of planning and coordination. Budget requests to the state for these agencies shall be included with the budget requests of the state board of education; however, the governance, management, and control of the respective agencies shall be vested respectively in the board of trustees of the state historical society, the Montana arts council, and the state library commission.

History: En. 82A-501.1 by Sec. 5, Ch. 51, L. 1974; R.C.M. 1947, 82A-501.1.

2-15-1512. Boards and offices associated with state historical society. (1) (a) There is a board of trustees of the state historical society that is created in Title 22, chapter 3.

(b) The composition, method of appointment, terms of office, and qualifications of board members remain as prescribed by law.

(2) (a) There is a preservation review board within the Montana historical society consisting of nine members.

(b) Members must be appointed by the governor in the following manner:

(i) five professional persons recognized in the fields of archaeology, history, paleontology, historic property administration, curation, planning, landscape architecture, conservation, folklore, cultural anthropology, traditional cultural property expertise, architecture, or architectural history. However, no more than two members may be appointed from any one of these fields; and

(ii) four members of the public who represent a broad spectrum of Montana society, who have demonstrated an interest in historic preservation, and whose views reflect the rich cultural heritage of the past as well as the opportunities of the future.

(c) Each member shall serve a 4-year term. A member may be reappointed.

(d) Members must be compensated and receive travel expenses as provided for in 2-15-124.

(3) (a) There is established the historic preservation office within the Montana historical society, to consist of a historic preservation officer and a qualified professional staff.

(b) The historic preservation officer is appointed by the governor from a list of three nominees submitted to the governor by the director of the Montana historical society with the approval of the Montana historical society board of trustees.

(c) The historic preservation officer is supervised by the director of the Montana historical society.

History: (1)En. 82A-507 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 7, Ch. 51, L. 1974; amd. Sec. 1, Ch. 203, L. 1975; amd. Sec. 23, Ch. 453, L. 1977; R.C.M. 1947, 82A-507(1), (2); (2), (3)En Secs. 1, 3, 6, Ch. 563, L. 1979; amd. Sec. 3, Ch. 650, L. 1985; amd. Sec. 1, Ch. 343, L. 1995.

2-15-1513. Montana arts council. (1) There is a Montana arts council which is created in Title 22, chapter 2.

(2) The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of council members remain as prescribed by law.

History: En. 82A-508 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 8, Ch. 51, L. 1974; R.C.M. 1947, 82A-508.

2-15-1514. State library commission — natural resource data system advisory committee. (1) (a) There is a state library commission created in Title 22, chapter 1.

(b) The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of commission members are as prescribed by law.

(2) (a) There is a natural resource data system advisory committee consisting of an employee of the legislative services division, of the department of administration, of the state library, and of each principal data source agency, appointed by the head of the respective state agency, and by the board of regents of higher education for the Montana university system.

(b) The state library shall provide staff support to the committee, within the limits of the library's available resources.

History: (1)En. 82A-509 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 9, Ch. 51, L. 1974; R.C.M. 1947, 82A-509; (2)En. Sec. 3, Ch. 650, L. 1983; amd. Sec. 1, Ch. 395, L. 1985; Sec. 2-15-1018, MCA 1983; redes. 2-15-1514(2) by Code Commissioner, 1985; amd. Sec. 9, Ch. 545, L. 1995; amd. Sec. 24, Ch. 313, L. 2001.

2-15-1515. Commission on federal higher education programs. (1) There is a commission on federal higher education programs that may be called into existence by the board of regents of higher education from time to time as the need arises. Whenever the commission is called into existence, the board shall request that the governor appoint members pursuant to subsection (2)(b).

(2) The commission consists of:

(a) ex officio, the appointed members of the board of regents of higher education; and

(b) a representative of each accredited private college or university in this state appointed by the governor from the board of trustees of each private college or university upon the request of the board of regents of higher education.

(3) The commission members appointed pursuant to subsection (2)(b) shall serve for the period of existence of the commission. However, the period of service may not exceed 4 years and is contingent upon continued status as a trustee. If a vacancy occurs in a position held by an individual appointed pursuant to subsection (2)(b), the governor shall appoint a replacement.

(4) The presiding officer of the board of regents of higher education is the presiding officer of the commission.

(5) The commissioner of higher education is the administrative officer of the commission.

(6) The commission is allocated to the board of regents of higher education for administrative purposes only as provided in 2-15-121.

(7) The commission members are entitled to compensation as provided in 2-15-124(7).

(8) The board of regents of higher education may terminate the commission from time to time when there is no need for its existence.

History: En. 82A-512 by Sec. 3, Ch. 220, L. 1974; R.C.M. 1947, 82A-512; amd. Sec. 1, Ch. 21, L. 1985; amd. Sec. 83, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-15-1516. Fertilizer advisory committee. (1) There is a fertilizer advisory committee.

(2) The committee is composed of seven members, appointed jointly by the director of the Montana agricultural experiment station and the director of the Montana cooperative extension service of Montana state university-Bozeman, as follows:

(a) five members involved in agriculture that includes the use of fertilizer in production; and

(b) two members from the fertilizer industry.

(3) The director of the department of agriculture shall serve as an ex officio member.

(4) The members shall serve staggered 5-year terms, except that members shall be initially appointed so that no more than two terms expire in any year.

History: En. Sec. 4, Ch. 397, L. 1971; Sec. 3-1732, R.C.M. 1947; amd. and redes. 82A-513 by Sec. 99, Ch. 218, L. 1974; R.C.M. 1947, 82A-513; amd. Sec. 1, Ch. 197, L. 1985; amd. sec. 36, Ch. 308, L. 1995.

2-15-1517. Repealed. Sec. 8, Ch. 21, L. 1985.

History: En. 75-9405 by Sec. 5, Ch. 515, L. 1977; R.C.M. 1947, 75-9405.

2-15-1518. Director of fire services training school. (1) The board of regents shall appoint the director of the fire services training school.

(2) The director may be removed for cause.

(3) The director must have the following qualifications:

(a) a bachelor's degree in a field of study related to fire protection; or

(b) 5 years' experience in an organized training program as an instructor and 7 years' experience as a firefighter or fire combat officer.

History: En. 75-7721 by Sec. 6, Ch. 104, L. 1977; R.C.M. 1947, 75-7721(part); amd. Sec. 1, Ch. 20, L. 1989.

2-15-1519. Fire services training advisory council. (1) The board of regents shall appoint a fire services training advisory council to work with the director of the fire services training school. The membership of the council must include the following:

(a) a fire chief;

(b) a volunteer firefighter;

(c) a paid firefighter;

(d) a fire service instructor;

(e) a person involved in fire prevention;

(f) a representative of the insurance industry; and

(g) a professional educator.

(2) The board shall solicit and consider the recommendations of appropriate organizations and associations of fire service personnel in making appointments under subsection (1).

(3) Members shall serve for 4-year terms and may be removed for cause. If a vacancy occurs, a member must be appointed to fill the unexpired term. A member may be reappointed.

(4) A representative of the state fire prevention and investigation section of the department of justice, a fire control officer designated by the director of the department of natural resources and conservation, and the director of the fire services training school are ex officio members of the council.

History: En. 75-7718 by Sec. 3, Ch. 104, L. 1977; R.C.M. 1947, 75-7718; amd. Sec. 1, Ch. 6, L. 1987; amd. Sec. 2, Ch. 20, L. 1989; amd. Sec. 2, Ch. 706, L. 1991; amd. Sec. 7, Ch. 418, L. 1995; amd. Sec. 2, Ch. 449, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 449 in (4) near beginning after "investigation" substituted "section" for "program"; and made minor changes in style. Amendment effective June 1, 2007.

2-15-1520. Student loan advisory council — terms — compensation. (1) There is a student loan advisory council appointed by the board of regents.

(2) The council consists of eight members. Each member must be appointed for a term of 3 years.

(3) Appointments to the council must conform to the following requirements:

(a) One member must be a representative of a private eligible educational institution, as defined in 20-26-1101.

(b) Two members must be representatives of a public eligible educational institution, as defined in 20-26-1101.

(c) Two members must be representatives of approved lenders.

(d) One member must be a full-time student registered at an eligible educational institution, as defined in 20-26-1101.

(e) One member, nonvoting, must be a representative of the office of the commissioner of higher education.

(f) One member must be a representative of the nonprofit corporation designated by the governor as the sole and exclusive nonprofit corporation in the state to provide a student loan acquisition program.

(4) A presiding officer must be selected by the council from its membership at the first meeting of each fiscal year.

(5) Each member of the council is entitled to compensation and reimbursement for travel expenses as provided in 2-15-122(5).

History: En. Sec. 1, Ch. 691, L. 1979; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 1, Ch. 308, L. 1995; amd. Sec. 2, Ch. 243, L. 1997.

2-15-1521. Cultural and aesthetic projects advisory committee. (1) There is a cultural and aesthetic projects advisory committee.

- (2) The committee consists of 16 members, appointed as follows:
 - (a) eight members appointed by the Montana historical society board of trustees; and
 - (b) eight members appointed by the Montana arts council.
- (3) Members serve terms of 4 years beginning January 1 following their appointment.
- (4) A member may be removed by the appointing authority.
- (5) All vacancies must be filled by the original appointing authority.
- (6) The committee shall elect a presiding officer and a vice presiding officer.
- (7) Members of the committee are entitled to compensation of \$25 a day and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day in attendance at a committee meeting.

History: En. Sec. 2, Ch. 99, L. 1983; amd. Sec. 84, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-15-1522. Certification standards and practices advisory council. (1) There is a certification standards and practices advisory council allocated to the board of public education.

(2) The council consists of seven members appointed by majority vote of the board of public education. The membership of the council must include:

- (a) three teachers engaged in classroom teaching, including:
 - (i) one who teaches within kindergarten through grade 8;
 - (ii) one who teaches within grades 9 through 12; and
 - (iii) one additional teacher from any category in subsection (2)(a) or (2)(b);
- (b) one person employed as a specialist or K-12 specialist;
- (c) one faculty member from an approved teacher education program offered by an accredited teacher education institution;
- (d) one person employed as an administrator, with the certification required in 20-4-106(1)(c); and
- (e) one school district trustee.

(3) The board of public education shall select and appoint the members by June 1. If a vacancy occurs on the council, the board of public education shall appoint a person from the category of membership, as provided in subsection (2), in which the vacancy has occurred to serve the unexpired term.

(4) Members shall serve staggered 3-year terms and must be appointed so that no more than three appointments expire in any 1 year.

History: En. Sec. 2, Ch. 465, L. 1987; amd. Sec. 1, Ch. 124, L. 1991.

2-15-1523. Ground water assessment steering committee. (1) There is a ground water assessment steering committee consisting of an employee of each of the following state agencies that have responsibility for ground water protection, management, or information. The member must be appointed by the head of the respective state agency:

- (a) the department of natural resources and conservation;
- (b) the department of environmental quality;
- (c) the department of agriculture; and
- (d) the Montana state library, natural resource information system.

(2) The ground water assessment steering committee may include representatives of the following agencies and units of government with expertise or management responsibility related to ground water and representatives of the organizations and groups specified in subsection (2)(h), who shall serve as ex officio members:

- (a) the legislative services division;
- (b) the board of oil and gas conservation;
- (c) the Montana bureau of mines and geology;
- (d) a unit of the university system, other than the Montana bureau of mines and geology, appointed by the board of regents of higher education for the Montana university system;
- (e) a county government, appointed by an organization of Montana counties;
- (f) a city, town, or city-county government, appointed by an organization of Montana cities and towns;

- (g) each principal federal agency that has responsibility for ground water protection, management, or research, appointed by the Montana head of the respective federal agency; and
 - (h) one representative of each of the following, appointed by the governor:
 - (i) agricultural water users;
 - (ii) industrial water users; and
 - (iii) a conservation or ecological protection organization.
 - (3) The ground water assessment steering committee shall elect a presiding officer from its voting members.
 - (4) The Montana bureau of mines and geology shall provide staff support to the committee.
- History:** En. Sec. 8, Ch. 769, L. 1991; amd. Sec. 8, Ch. 418, L. 1995; amd. Sec. 10, Ch. 545, L. 1995.

2-15-1524. Governor's postsecondary scholarship advisory council — terms. (1) There is a three-member governor's postsecondary scholarship advisory council appointed by the governor.

- (2) Members shall serve staggered 3-year terms and must include:
 - (a) at least one member with experience in financial aid at a postsecondary institution; and
 - (b) at least one member with experience in secondary or postsecondary education.
- (3) A presiding officer must be selected by the council from among its membership at the first meeting of the council.
- (4) The council shall:
 - (a) advise the board on issues related to the governor's postsecondary scholarship program and other student assistance programs; and
 - (b) report to the governor annually or at any time upon request by the governor.
- (5) The council is attached to the commissioner of higher education for administrative purposes only, as provided in 2-15-121, and members are entitled to compensation as provided in 2-15-122(5).

History: En. Sec. 4, Ch. 489, L. 2005.

2-15-1525 through 2-15-1529 reserved.

2-15-1530. Montana university system interunit benefits advisory committee — composition. (1) There is a Montana university system interunit benefits advisory committee with members appointed by the commissioner.

- (2) The members must be selected from a diverse group in order to adequately represent the interests of the employees of the Montana university system.
- (3) One-half of the members must be appointed based upon the recommendations of the labor organizations representing employees of the Montana university system.
- (4) The provisions of 2-15-122(1) through (8) apply to the advisory committee and its members.

History: En. Sec. 4, Ch. 256, L. 1999.

Part 17

Department of Labor and Industry

2-15-1771. Board of athletic trainers. (1) There is a board of athletic trainers.

- (2) The board is composed of five members appointed by the governor as follows:
 - (a) one member who is a physician licensed under Title 37, chapter 3, preferably with a background in the practice of sports medicine;
 - (b) three members who are athletic trainers who have been engaged in the practice of athletic training in the state for at least 2 years prior to being appointed. After the initial appointments are made to establish the board, each of the three members must be licensed as an athletic trainer under Title 37, chapter 36. Of these three members, at the time of appointment:
 - (i) one must be employed by or retired from employment with a postsecondary institution in Montana;
 - (ii) one must be employed in or retired from a secondary school in Montana; and
 - (iii) one must be employed by or retired from a health care facility or an athletic facility in Montana.
 - (c) one member of the public who is not engaged in or directly connected with the practice of athletic training.

(3) There may be no more than one retired athletic trainer serving on the board at anytime.

(4) A vacancy on the board must be filled for an unexpired term to maintain the representation provided in subsection (2).

(5) The board is attached for administrative purposes only, as prescribed in 2-15-121, to the department of labor and industry.

(6) Members must be compensated as provided in 2-18-501 through 2-18-503.

(7) Members shall serve 4-year, staggered terms. A member may be reappointed for one consecutive term. A member who is reappointed must be eligible under the same criteria as when first appointed.

(8) For the purposes of this section, an appointment to fill an unexpired term does not constitute a full term.

(9) The governor may remove a member from the board for neglect of duty, for incompetency, or for cause.

History: En. Sec. 1, Ch. 388, L. 2007.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

CHAPTER 16 PUBLIC OFFICERS

Part 1 General Provisions

2-16-101. Classification of public officers. (1) The public officers of this state are classified as follows:

- (a) legislative;
- (b) executive;
- (c) judicial;
- (d) ministerial officers and officers of the courts.
- (2) This classification is not to be construed as defining the legal powers of either class.
- (3) Executive officers are either:
 - (a) civil; or
 - (b) military.

History: (1), (2) En. Sec. 140, Pol. C. 1895; re-en. Sec. 49, Rev. C. 1907; re-en. Sec. 50, R.C.M. 1921; Cal. Pol. C. Sec. 220; re-en. Sec. 50, R.C.M. 1935; Sec. 59-101, R.C.M. 1947; (3) En. Sec. 330, Pol. C. 1895; re-en. Sec. 125, Rev. C. 1907; re-en. Sec. 109, R.C.M. 1921; Cal. Pol. C. Sec. 341; re-en. Sec. 109, R.C.M. 1935; Sec. 59-201, R.C.M. 1947; R.C.M. 1947, 59-101, 59-201.

2-16-102. Qualifications generally — age and citizenship. (1) Provisions respecting disqualifications for particular offices are contained in the constitution and in the provisions of the laws concerning the various offices.

(2) A person is not eligible to hold civil office in this state who at the time of election or appointment is not 18 years of age or older and a citizen of this state.

History: (1) En. Sec. 961, Pol. C. 1895; re-en. Sec. 343, Rev. C. 1907; re-en. Sec. 411, R.C.M. 1921; Cal. Pol. C. Sec. 842; re-en. Sec. 411, R.C.M. 1935; Sec. 59-302, R.C.M. 1947; (2) En. Sec. 960, Pol. C. 1895; re-en. Sec. 342, Rev. C. 1907; re-en. Sec. 410, R.C.M. 1921; Cal. Pol. C. Sec. 841; re-en. Sec. 410, R.C.M. 1935; amd. Sec. 14, Ch. 240, L. 1971; amd. Sec. 1, Ch. 9, L. 1973; amd. Sec. 21, Ch. 94, L. 1973; Sec. 59-301, R.C.M. 1947; R.C.M. 1947, 59-301, 59-302; amd. Sec. 96, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-16-103 through 2-16-106 reserved.

2-16-107. Use of Montana flag at funerals. (1) A public official has the right to have a Montana state flag draped over the casket of the public official. The family of the public official is responsible for providing the flag.

(2) As used in this section, "public official" means a person who was ever elected to a statewide office, a state office from a district, or a countywide office.

History: En. Sec. 1, Ch. 219, L. 2005.

2-16-108 through 2-16-110 reserved.

2-16-111. Residence of officers. (1) The following officers must reside and keep their offices at the seat of government: the governor, secretary of state, state auditor, attorney general, superintendent of public instruction, justices of the supreme court, and clerk of the supreme court.

(2) Restrictions upon the residence of other officers are contained in the chapter or part relating to the respective officers.

History: (1) En. Sec. 970, Pol. C. 1895; re-en. Sec. 345, Rev. C. 1907; re-en. Sec. 413, R.C.M. 1921; Cal. Pol. C. Sec. 852; re-en. Sec. 413, R.C.M. 1935; amd. Sec. 3, Ch. 468, L. 1977; Sec. 59-304, R.C.M. 1947; (2) En. Sec. 974, Pol. C. 1895; re-en. Sec. 349, Rev. C. 1907; re-en. Sec. 417, R.C.M. 1921; re-en. Sec. 417, R.C.M. 1935; Sec. 59-308, R.C.M. 1947; R.C.M. 1947, 59-304, 59-308.

2-16-112. Absence from state. Except as provided in 10-1-1008, an officer mentioned in 2-16-111(1) or an officer appointed by the governor and confirmed by the senate may not be absent from the state for more than 60 consecutive days unless on business of the state or with the consent of the legislature.

History: En. Sec. 971, Pol. C. 1895; re-en. Sec. 346, Rev. C. 1907; re-en. Sec. 414, R.C.M. 1921; Cal. Pol. C. Sec. 853; re-en. Sec. 414, R.C.M. 1935; R.C.M. 1947, 59-305; amd. Sec. 19, Ch. 381, L. 2005.

2-16-113. Seals. (1) Each of the executive and state officers of the state must have a seal. Such seal must contain the same representations and motto as is found on the great seal and must be 2 inches in diameter, surrounded by the words "State of Montana" (giving the title of the office, "Secretary of State", etc.).

(2) An impression of the seal of executive and state officers must be filed in the office of the secretary of state.

History: En. Sec. 1131, Pol. C. 1895; re-en. Sec. 431, Rev. C. 1907; re-en. Sec. 527, R.C.M. 1921; re-en. Sec. 527, R.C.M. 1935; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 19-112.

2-16-114. Facsimile signatures and seals. (1) As used in this section, the following definitions apply:

(a) "Authorized officer" means any official of this state or any of its departments, agencies, public bodies, or other instrumentalities or any of its political subdivisions whose signature to a public security or instrument of payment is required or permitted.

(b) "Facsimile signature" means a reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer.

(c) "Instrument of payment" means a check, draft, warrant, or order for the payment, delivery, or transfer of funds.

(d) "Public security" means a bond, note, certificate of indebtedness, or other obligation for the payment of money issued by this state or by any of its departments, agencies, public bodies, or other instrumentalities or by any of its political subdivisions.

(2) An authorized officer, after filing with the secretary of state or, in the case of officers of any city, town, county, school district, or other political subdivision, with the clerk of the subdivision, the officer's manual signature certified by the officer under oath, may execute or cause to be executed with a facsimile signature in lieu of the manual signature:

(a) any public security, provided that at least one signature required or permitted to be placed on the security must be manually subscribed, but manual subscription is not required for interest coupons attached to the security; and

(b) any instrument of payment.

(3) Upon compliance with this section by the authorized officer, the facsimile signature has the same legal effect as a manual signature.

(4) When the seal of this state or any of its departments, agencies, public bodies, or other instrumentalities or of any of its political subdivisions is required in the execution of a public security or instrument of payment, the authorized officer may cause the seal to be printed, engraved, stamped, or otherwise placed in facsimile on the security or instrument. The facsimile seal has the same legal effect as the impression of the seal.

(5) A person who with intent to defraud uses on a public security or an instrument of payment a facsimile signature or any reproduction of it of any authorized officer or any facsimile seal or any reproduction of it of this state or any of its departments, agencies, public bodies, or other instrumentalities or of any of its political subdivisions is guilty of a felony.

History: En. Secs. 1 thru 4, Ch. 260, L. 1959; R.C.M. 1947, 59-1301, 59-1302, 59-1303, 59-1304; amd. Sec. 97, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-16-115. Signature of officer acting ex officio. When an officer discharges ex officio the duties of an office other than that to which the officer is elected or appointed, the officer's official signature and attestation, except as otherwise provided by law, must be in the name of the office of which the officer discharges the duties.

History: En. Sec. 1135, Pol. C. 1895; re-en. Sec. 437, Rev. C. 1907; re-en. Sec. 454, R.C.M. 1921; Cal. Pol. C. Sec. 1031; re-en. Sec. 454, R.C.M. 1935; R.C.M. 1947, 59-511; amd. Sec. 98, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-16-116. Power to administer oaths. Every executive, state, and judicial officer may administer and certify oaths.

History: En. Sec. 1132, Pol. C. 1895; re-en. Sec. 434, Rev. C. 1907; re-en. Sec. 463, R.C.M. 1921; Cal. Pol. C. Sec. 1028; re-en. Sec. 463, R.C.M. 1935; R.C.M. 1947, 59-533.

2-16-117. Office hours. (1) Unless otherwise provided by law, state executive branch offices must be open for the transaction of business continuously from 8 a.m. until 5 p.m. each day except on Saturdays, Sundays, and holidays. Each office must also be open at other times as the accommodation of the public or the proper transaction of business requires.

(2) The state treasurer may, in the interest of safekeeping funds, securities, and records, close the state treasurer's office from noon to 1 p.m. each day.

(3) The Montana historical society, established in 22-3-101, may be open for public visitation at hours other than those prescribed in this section, including hours during evenings and weekends.

History: En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R.C.M. 1921; Cal. Pol. C. Sec. 1030; amd. Sec. 1, Ch. 5, L. 1931; re-en. Sec. 453, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1951; amd. Sec. 1, Ch. 253, L. 1957; amd. Sec. 1, Ch. 2, L. 1961; R.C.M. 1947, 59-510(1)(part); amd. Sec. 1, Ch. 3, L. 1997.

Part 2 Accession to Office

2-16-201. Manner of election of certain officers. The mode of election of the governor, lieutenant governor, secretary of state, state auditor, attorney general, and superintendent of public instruction is prescribed by the constitution.

History: En. Sec. 340, Pol. C. 1895; re-en. Sec. 128, Rev. C. 1907; re-en. Sec. 111, R.C.M. 1921; Cal. Pol. C. Sec. 348; re-en. Sec. 111, R.C.M. 1935; amd. Sec. 22, Ch. 100, L. 1973; R.C.M. 1947, 59-203.

2-16-202. Title contested — salary withheld. (1) When the title of the incumbent of any office in this state is contested by proceedings instituted in any court for that purpose, a warrant may not be drawn or paid for any part of the incumbent's salary until the proceedings have been finally determined.

(2) As soon as the proceedings are instituted, the clerk of the court in which they are pending shall certify the facts to the officers whose duty it would otherwise be to draw the warrant or pay the salary.

History: En. Secs. 1040, 1041, Pol. C. 1895; re-en. Secs. 375, 376, Rev. C. 1907; re-en. Secs. 451, 452, R.C.M. 1921; Cal. Pol. C. Secs. 936, 937; re-en. Secs. 451, 452, R.C.M. 1935; R.C.M. 1947, 59-508, 59-509; amd. Sec. 99, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-16-203. Manner of appointments. Every officer, the mode of whose appointment is not prescribed by the constitution or statutes, must be appointed by the governor by and with the advice and consent of the senate.

History: En. Sec. 990, Pol. C. 1895; re-en. Sec. 351, Rev. C. 1907; re-en. Sec. 419, R.C.M. 1921; Cal. Pol. C. Sec. 875; re-en. Sec. 419, R.C.M. 1935; R.C.M. 1947, 59-401.

2-16-204. Gubernatorial commissions. (1) The governor must commission:

- (a) All officers elected by the people whose commissions are not otherwise provided for;
- (b) All officers of the militia;
- (c) All officers appointed by the governor or by the governor with consent of the senate;

(d) United States senators.

(2) The commissions of all officers commissioned by the governor must be issued in the name of the state and must be signed by the governor and attested by the secretary of state under the great seal.

History: En. Secs. 1002, 1003, Pol. C. 1895; re-en. Secs. 358, 359, Rev. C. 1907; re-en. Secs. 426, 427, R.C.M. 1921; Cal. Pol. C. Secs. 891, 892; re-en. Secs. 426, 427, R.C.M. 1935; R.C.M. 1947, 59-409, 59-410.

2-16-205. Other commissions. The commissions of all other officers, where no special provision is made by law, must be signed by the presiding officer of the body or by the person making the appointment.

History: En. Sec. 1004, Pol. C. 1895; re-en. Sec. 360, Rev. C. 1907; re-en. Sec. 428, R.C.M. 1921; Cal. Pol. C. Sec. 893; re-en. Sec. 428, R.C.M. 1935; R.C.M. 1947, 59-411.

2-16-206 through 2-16-210 reserved.

2-16-211. Oaths — form — before whom — when. (1) Members of the legislature and all officers, executive, ministerial, or judicial, must, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support, protect, and defend the constitution of the United States and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)."

(2) No other oath, declaration, or test must be required as a qualification for any office or public trust.

(3) Except when otherwise provided, the oath may be taken before any officer authorized to administer oaths.

History: (1), (2) En. Sec. 3, p. 90, L. 1876; re-en. Sec. 575, 5th Div. Rev. Stat. 1879; re-en. Sec. 1067, 5th Div. Comp. Stat. 1887; amd. Sec. 1010, Pol. C. 1895; re-en. Sec. 362, Rev. C. 1907; re-en. Sec. 430, R.C.M. 1921; Cal. Pol. C. Sec. 904; re-en. Sec. 430, R.C.M. 1935; amd. Sec. 4, Ch. 7, L. 1973; amd. Sec. 23, Ch. 100, L. 1973; Sec. 59-413, R.C.M. 1947; (3) En. Sec. 1013, Pol. C. 1895; re-en. Sec. 365, Rev. C. 1907; re-en. Sec. 433, R.C.M. 1921; Cal. Pol. C. Sec. 908; re-en. Sec. 433, R.C.M. 1935; Sec. 59-416, R.C.M. 1947; R.C.M. 1947, 59-413, 59-416.

2-16-212. Filing. (1) Unless a different time is prescribed by law, the oath of office must be taken, subscribed, and filed within 30 days after the officer has notice of election or appointment or before the expiration of 15 days from the commencement of the term of office when a notice of election or appointment has not been given.

(2) An oath of office, certified by the officer before whom the oath was taken, must be filed within the time required by law, except when otherwise specially provided, as follows:

(a) the oath of all officers whose authority is not limited to any particular county, in the office of the secretary of state;

(b) the oath of all officers, elected or appointed for any county and of all officers whose duties are local or whose residence in any particular county is prescribed by law and of the clerks of the district courts, in the offices of the clerks of the respective counties.

History: (1) En. Sec. 1, Ch. 1, L. 1907; Sec. 364, Rev. C. 1907; re-en. Sec. 432, R.C.M. 1921; Cal. Pol. C. Sec. 907; re-en. Sec. 432, R.C.M. 1935; Sec. 59-415, R.C.M. 1947; (2) En. Sec. 1014, Pol. C. 1895; re-en. Sec. 366, Rev. C. 1907; re-en. Sec. 434, R.C.M. 1921; Cal. Pol. C. Sec. 909; re-en. Sec. 434, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1949; Sec. 59-417, R.C.M. 1947; R.C.M. 1947, 59-415, 59-417(1), (2); amd. Sec. 100, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-16-213. Term of office — holdover — assumption of office. (1) An office for which the duration is not fixed by law is held at the pleasure of the appointing authority.

(2) An officer shall continue to discharge the duties of the office, although the term has expired, until a successor has qualified.

(3) Notwithstanding the provisions of subsection (2), an appointee who is by law subject to confirmation by the senate may, upon expiration of or vacancy in the previous term, assume the office to which appointed and is a de jure officer even though the senate has not yet confirmed the appointment. If the senate rejects the appointment, the office becomes vacant.

History: En. Secs. 993, 994, Pol. C. 1895; re-en. Secs. 354, 355, Rev. C. 1907; re-en. Secs. 422, 423, R.C.M. 1921; Cal. Pol. C. Secs. 878, 879; re-en. Secs. 422, 423, R.C.M. 1935; R.C.M. 1947, 59-405, 59-406; amd. Sec. 2, Ch. 83, L. 1983; amd. Sec. 101, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-16-214. Definition of current term for purposes of term limits. As used in Article IV, section 8, of the Montana constitution, “current term” means the term served after regular election to a full term to an office and does not include time served in an appointed or an elected capacity in an office to finish the term of the original incumbent after a vacancy has occurred.

History: En. Sec. 1, Ch. 144, L. 2003.

Part 3 Deputies

2-16-301. Appointment of deputies and subordinate officers — number. (1) All assistants, deputies, and other subordinate officers whose appointments are not otherwise provided for must be appointed by the officer or body to whom they are respectively subordinate.

(2) When the number of such deputies or subordinate officers is not fixed by law, it is limited only by the discretion of the appointing power.

(3) The appointment of deputies not otherwise provided for must be made in writing filed in the office of the appointing power or the office of its clerk.

History: (1)En. Sec. 991, Pol. C. 1895; re-en. Sec. 352, Rev. C. 1907; re-en. Sec. 420, R.C.M. 1921; Cal. Pol. C. Sec. 876; re-en. Sec. 420, R.C.M. 1935; Sec. 59-402, R.C.M. 1947; (2)En. Sec. 992, Pol. C. 1895; re-en. Sec. 353, Rev. C. 1907; re-en. Sec. 421, R.C.M. 1921; Cal. Pol. C. Sec. 877; re-en. Sec. 421, R.C.M. 1935; Sec. 59-403, R.C.M. 1947; (3)En. Sec. 1005, Pol. C. 1895; re-en. Sec. 361, Rev. C. 1907; re-en. Sec. 429, R.C.M. 1921; Cal. Pol. C. Sec. 894; re-en. Sec. 429, R.C.M. 1935; Sec. 59-412, R.C.M. 1947; R.C.M. 1947, 59-402, 59-403, 59-412; amd. Sec. 1, Ch. 21, L. 1983.

2-16-302. Oath of deputies. Deputies must within 10 days after receiving notice of their appointment take and file an oath in the manner required of their principals.

History: En. Sec. 1015, Pol. C. 1895; re-en. Sec. 367, Rev. C. 1907; re-en. Sec. 435, R.C.M. 1921; Cal. Pol. C. Sec. 910; re-en. Sec. 435, R.C.M. 1935; R.C.M. 1947, 59-418; amd. Sec. 2, Ch. 21, L. 1983.

2-16-303. Powers. In all cases not otherwise provided for, each deputy possesses the powers and may perform the duties attached by law to the office of the principal.

History: En. Sec. 980, Pol. C. 1895; re-en. Sec. 350, Rev. C. 1907; re-en. Sec. 418, R.C.M. 1921; Cal. Pol. C. Sec. 865; re-en. Sec. 418, R.C.M. 1935; R.C.M. 1947, 59-404; amd. Sec. 102, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

Part 5 Vacancy and Succession

2-16-501. Vacancies created. An office becomes vacant on the happening of any one of the following events before the expiration of the term of the incumbent:

- (1) the death of the incumbent;
- (2) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent suffers from a mental disorder and is in need of commitment;
- (3) resignation of the incumbent;
- (4) removal of the incumbent from office;
- (5) the incumbent's ceasing to be a resident of the state or, if the office is local, of the district, city, county, town, or township for which the incumbent was chosen or appointed or within which the duties of the incumbent's office are required to be discharged;
- (6) except as provided in 10-1-1008, absence of the incumbent from the state, without the permission of the legislature, beyond the period allowed by law;
- (7) the incumbent's ceasing to discharge the duty of the incumbent's office for the period of 3 consecutive months, except when prevented by sickness, when absent from the state by permission of the legislature, or as provided in 10-1-1008;
- (8) conviction of the incumbent of a felony or of an offense involving moral turpitude or a violation of the incumbent's official duties;
- (9) the incumbent's refusal or neglect to file the incumbent's official oath or bond within the time prescribed;
- (10) the decision of a competent tribunal declaring void the incumbent's election or appointment.

History: En. Sec. 42, p. 385, Bannack Stat.; re-en. Sec. 42, p. 468, Cod. Stat. 1871; amd. Sec. 554, 5th Div. Rev. Stat. 1879; re-en. Sec. 1046, 5th Div. Comp Stat. 1887; amd. Sec. 1101, Pol. C. 1895; re-en. Sec. 420, Rev. C.

1907; re-en. Sec. 511, R.C.M. 1921; Cal. Pol. C. Sec. 996; re-en. Sec. 511, R.C.M. 1935; R.C.M. 1947, 59-602; amd. Sec. 26, Ch. 184, L. 1979; amd. Sec. 1, Ch. 490, L. 1997; amd. Sec. 20, Ch. 381, L. 2005.

2-16-502. Resignations. (1) Resignations must be in writing and made as follows:

(a) by the governor and lieutenant governor, to the legislature if it is in session and, if not, then to the secretary of state;

(b) by all officers commissioned by the governor, to the governor;

(c) by senators and members of the house of representatives, if the legislature is not in session, to the secretary of state and, if it is in session, to the presiding officer of the branch to which the member belongs, who must immediately transmit the same to the secretary of state;

(d) by all county and township officers not commissioned by the governor, to the clerk of the board of commissioners of their respective counties;

(e) by all other appointed officers, to the body or officer that appointed them;

(f) by all trustees of school districts, to the clerk of the respective school district, provided for in 20-3-325;

(g) in all cases not otherwise provided for, by filing the resignation in the office of the secretary of state.

(2) A resignation is effective 72 hours after its submission in the manner provided for in subsection (1) unless the resignation is withdrawn during that 72-hour period by the resigner through written notification of withdrawal made in the same manner as provided in subsection (1) for resignations.

History: En. Sec. 41, p. 468, Cod. Stat. 1871; re-en. Sec. 553, 5th Div. Rev. Stat. 1879; re-en. Sec. 1045, 5th Div. Comp. Stat. 1887; amd. Sec. 1100, Pol. C. 1895; re-en. Sec. 419, Rev. C. 1907; amd. Sec. 1, Ch. 8, L. 1921; re-en. Sec. 510, R.C.M. 1921; Cal. Pol. C. Sec. 995; re-en. Sec. 510, R.C.M. 1935; R.C.M. 1947, 59-601; amd. Sec. 1, Ch. 68, L. 1981; amd. Sec. 1, Ch. 64, L. 1993.

2-16-503. Notice of removal. Whenever an officer is removed, committed pursuant to 53-21-127, or convicted of a felony or offense involving moral turpitude or a violation of the officer's official duty or whenever the officer's election or appointment is declared void, the body, judge, or officer before whom the proceedings were conducted shall give notice of the proceedings to the officer authorized to fill the vacancy.

History: En. Sec. 1102, Pol. C. 1895; re-en. Sec. 421, Rev. C. 1907; re-en. Sec. 512, R.C.M. 1921; Cal. Pol. C. Sec. 997; re-en. Sec. 512, R.C.M. 1935; R.C.M. 1947, 59-603; amd. Sec. 27, Ch. 184, L. 1979; amd. Sec. 2, Ch. 490, L. 1997.

2-16-504. Elective officers' inability to perform — filling vacancy — notice. (1) When an incumbent in the office of lieutenant governor, secretary of state, attorney general, auditor, or superintendent of public instruction is found to be permanently unable to perform the functions of the position, a vacancy exists.

(2) When a written declaration, made as provided in subsection (4), is transmitted to the legislature that any officer enumerated in subsection (1) is unable to discharge the powers and duties of office, the legislature may convene in the manner provided for the convening of special sessions to determine whether the disability exists or it may defer a determination to the next regular session of the legislature.

(3) If the legislature within 21 days after convening, whether in regular or special session, determines by two-thirds vote of its members that the officer is unable to discharge the powers and duties of office, the office is declared to be vacant and must be filled as provided by the constitution of Montana or laws enacted pursuant to the constitution.

(4) The written declaration required under this section must be made and transmitted by the lieutenant governor and attorney general unless one of them is the officer whose disability is in question. If the lieutenant governor is the subject of the declaration, the declaration must be made by the governor and attorney general, and if the attorney general is the subject of the declaration, the declaration must be made by the governor and secretary of state.

History: En. Sec. 1, Ch. 343, L. 1973; R.C.M. 1947, 59-609; amd. Sec. 104, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-16-505. Filling vacancies in certain elective offices. A vacancy in the office of the secretary of state, state auditor, attorney general, clerk of the supreme court, or superintendent of public instruction must be filled by a person appointed by the governor. The appointee holds

office until the first Monday in January after the next general election. At that election, the office must be filled by election for the unexpired term.

History: En. Sec. 1106, Pol. C. 1895; re-en. Sec. 425, Rev. C. 1907; re-en. Sec. 516, R.C.M. 1921; Cal. Pol. C. Sec. 1001; re-en. Sec. 516, R.C.M. 1935; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 59-607; amd. Sec. 105, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-16-506. Filling vacancies — recess appointments. (1) When any office becomes vacant and no mode is provided by law for filling the vacancy, the governor shall fill the vacancy by appointing a qualified person to fill the unexpired term of the person whose office became vacant.

(2) If the legislature or one house of the legislature must confirm an appointment of a person appointed by the governor to fill a vacancy, the governor may appoint the person to assume office before the legislature meets in its next regular session to consider the appointment. A person so appointed is vested with all the functions of the office upon assuming the office and is a de jure officer, notwithstanding the fact that the legislature has not yet confirmed the appointment. If the legislature does not confirm the appointment, the governor shall make a new appointment to fill the unexpired term.

History: En. Sec. 1104, Pol. C. 1895; re-en. Sec. 423, Rev. C. 1907; re-en. Sec. 514, R.C.M. 1921; Cal. Pol. C. Sec. 999; re-en. Sec. 514, R.C.M. 1935; amd. Sec. 1, Ch. 388, L. 1973; R.C.M. 1947, 59-605.

2-16-507. Powers and duties of officer filling unexpired term. A person elected or appointed to fill a vacancy, after filing the official oath and bond, possesses all the rights and powers and is subject to all the liabilities, duties, and obligations as if the person had been elected to the office for a full term.

History: En. Sec. 1107, Pol. C. 1895; re-en. Sec. 426, Rev. C. 1907; re-en. Sec. 517, R.C.M. 1921; Cal. Pol. C. Sec. 1004; re-en. Sec. 517, R.C.M. 1935; R.C.M. 1947, 59-608; amd. Sec. 106, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-16-508 through 2-16-510 reserved.

2-16-511. Vacancy in office of governor and lieutenant governor. (1) If the offices of both the governor and the lieutenant governor become vacant, the president of the senate shall become governor and shall appoint a lieutenant governor.

(2) If the president of the senate is unable to assume the office of governor, the speaker of the house shall become governor and a lieutenant governor shall be elected in accordance with the provision of 2-16-512.

History: En. Sec. 1, Ch. 29, L. 1973; R.C.M. 1947, 82-1304.1.

2-16-512. Election by legislature if president of senate and speaker unable to assume office of governor. (1) If neither the president of the senate nor the speaker of the house of representatives is able to assume the office of governor, the legislature, meeting in joint session, shall elect a governor and a lieutenant governor.

(2) When the speaker of the house becomes governor, the legislature will meet in joint session and shall elect a lieutenant governor.

History: En. Sec. 2, Ch. 29, L. 1973; R.C.M. 1947, 82-1304.2.

2-16-513. Succession in case of termination or incapacitation of primary successors. (1) If, because of an enemy attack upon the United States, the governor, lieutenant governor, president pro tempore of the senate, and speaker of the house are killed or rendered unable to serve as governor, the senior member of the legislature shall act as governor.

(2) The senior member of the legislature shall call an emergency session of the legislature at a safe location within the state. The legislature meeting in joint session shall elect a governor.

(3) For the purposes of this section, the member with seniority is the member who has served in the legislature for the longest continuous period of time up to and including the member's current term. If two or more members of the legislature have equal seniority, the line of succession among them is from eldest to youngest in age.

History: En. Sec. 1, Ch. 148, L. 1959; R.C.M. 1947, 82-1309; amd. Sec. 28, Ch. 184, L. 1979; amd. Sec. 107, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-16-514. Successor to serve until next general election. The successor to the governor and the lieutenant governor shall serve until the next general election and shall have all the powers, duties, and emoluments of the respective offices.

History: En. Sec. 3, Ch. 29, L. 1973; R.C.M. 1947, 82-1304.3.

2-16-515. Governor and lieutenant governor incapacitated. (1) If both the governor and lieutenant governor are unable to serve as governor, the president of the senate shall become acting governor until the governor or lieutenant governor is able to resume the duties of the office.

(2) If the president of the senate is unable to become acting governor, the speaker of the house of representatives shall become acting governor.

History: En. Sec. 4, Ch. 29, L. 1973; R.C.M. 1947, 82-1304.4.

2-16-516 through 2-16-520 reserved.

2-16-521. Powers of acting governor. (1) Every provision of the laws of this state in relation to the powers and duties of the governor and in relation to acts and duties to be performed by others toward the governor extends to the persons performing for the time being the duties of governor.

(2) An acting governor has all the rights, duties, and emoluments of the office of governor while acting as governor.

History: (1)En. Sec. 373, Pol. C. 1895; re-en. Sec. 148, Rev. C. 1907; re-en. Sec. 127, R.C.M. 1921; Cal. Pol. C. Sec. 383; re-en. Sec. 127, R.C.M. 1935; Sec. 82-1304, R.C.M. 1947; (2)En. Sec. 5, Ch. 29, L. 1973; Sec. 82-1304.5, R.C.M. 1947; R.C.M. 1947, 82-1304, 82-1304.5; amd. Sec. 108, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

Part 6 Montana Recall Act

2-16-601. Short title. This part shall be cited as the "Montana Recall Act".

History: En. Sec. 1, I.M. No. 73, approved November 2, 1976; amd. Sec. 2, Ch. 364, L. 1977; R.C.M. 1947, 59-610.

2-16-602. Definitions. As used in this part, the following definitions apply:

(1) "Political subdivision" means a local government unit including but not limited to a county, city, or town established under authority of Article XI, section 1, of The Constitution of the State of Montana or a school district.

(2) "Public office" means a position of duty, trust, or authority created by the constitution or by the legislature or by a political subdivision through authority conferred by the constitution or the legislature that meets the following criteria:

(a) the position must possess a delegation of a portion of the sovereign power of government to be exercised for the benefit of the public;

(b) the powers conferred and the duties to be discharged must be defined, directly or impliedly, by the constitution, the legislature, or by a political subdivision through legislative authority;

(c) the duties must be performed independently and without control of a superior power other than the law, unless the legislature has created the position and placed it under the general control of a superior office or body; and

(d) the position must have some permanency and continuity and not be only temporary or occasional.

(3) "State-district" means a public service commission district, a legislative representative or senatorial district, or a judicial district.

History: En. 59-611 by Sec. 1, Ch. 364, L. 1977; R.C.M. 1947, 59-611.

2-16-603. Officers subject to recall — grounds for recall. (1) Any person holding a public office of the state or any of its political subdivisions, either by election or appointment, is subject to recall from office.

(2) A public officer holding an elective office may be recalled by the qualified electors entitled to vote for the elective officer's successor. A public officer holding an appointive office may be recalled by the qualified electors entitled to vote for the successor or successors of the elective officer or officers who have the authority to appoint a person to that position.

(3) Physical or mental lack of fitness, incompetence, violation of the oath of office, official misconduct, or conviction of a felony offense enumerated in Title 45 are the only grounds for recall. A person may not be recalled for performing a mandatory duty of the office that the person holds or for not performing any act that, if performed, would subject the person to prosecution for official misconduct.

History: En. Sec. 2, I.M. No. 73, approved November 2, 1976; amd. Sec. 3, Ch. 364, L. 1977; R.C.M. 1947, 59-612; amd. Sec. 1, Ch. 398, L. 1979; amd. Sec. 109, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-16-604 through 2-16-610 reserved.

2-16-611. Method of removal cumulative. The recall is cumulative and additional to, rather than a substitute for, other methods for removal of public officers.

History: En. Sec. 3, I.M. No. 73, approved November 2, 1976; R.C.M. 1947, 69-613.

2-16-612. Persons qualified to petition — penalty for false signatures. (1) A person who is a qualified elector of this state may sign a petition for recall of a state officer.

(2) A person who is a qualified elector of a district of the state from which a state-district officer is elected may sign a petition for recall of a state-district officer of that district or appointed by an officer or the officers of that election district.

(3) A person who is a qualified elector of a political subdivision of this state may sign a petition for recall of an officer of that political subdivision. However, if a political subdivision is divided into election districts, a person must be a qualified elector in the election district to be eligible to sign a petition to recall an officer elected from that election district.

(4) A person signing any name other than the person's own to any petition or knowingly signing more than once for the recall or who is not at the time of the signing a qualified elector or a person who knowingly makes a false entry upon an affidavit required in connection with the filing of a petition for the recall of an officer is guilty of unsworn falsification or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-203 or 45-7-208, as applicable.

History: En. Sec. 10, I.M. No. 73, approved November 2, 1976; amd. Sec. 7, Ch. 364, L. 1977; R.C.M. 1947, 59-620; amd. Sec. 110, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-16-613. Limitations on recall petitions. (1) A recall petition may not name more than one officer to be recalled.

(2) A recall petition against an officer may not be approved for circulation, as required in 2-16-617(3), until an officer has held office for 2 months.

(3) A recall petition may not be filed against an officer for whom a recall election has been held for a period of 2 years during the officer's term of office unless the state or political subdivision or subdivisions financing the recall election are first reimbursed for all expenses of the preceding recall election.

History: (1)En. Sec. 4, I.M. No. 73, approved November 2, 1976; amd. Sec. 4, Ch. 364, L. 1977; Sec. 59-614, R.C.M. 1947; (2), (3)En. Sec. 5, I.M. No. 73, approved November 2, 1976; Sec. 59-615, R.C.M. 1947; R.C.M. 1947, 59-614(part), 59-615; amd. Sec. 1, Ch. 159, L. 1983; amd. Sec. 111, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-16-614. Number of electors required for recall petition. Recall petitions for elected or appointed state officers shall contain the signatures of qualified electors equaling at least 10% of the number of persons registered to vote at the preceding state general election. A petition for the recall of a state-district officer must contain the signatures of qualified electors equaling at least 15% of the number of persons registered to vote in the last preceding election in that district. Recall petitions for elected or appointed county officers shall contain the signatures of qualified electors equaling at least 15% of the number of persons registered to vote at the

preceding county general election. Recall petitions for elected or appointed officers of municipalities or school districts shall contain the signatures of qualified electors equaling at least 20% of the number of persons registered to vote at the preceding election for the municipality or school district.

History: En. Sec. 4, I.M. No. 73, approved November 2, 1976; amd. Sec. 4, Ch. 364, L. 1977; R.C.M. 1947, 59-614(part); amd. Sec. 1, Ch. 308, L. 1979.

2-16-615. Filing of recall petitions — mandamus for refusal. (1) Recall petitions for elected officers shall be filed with the official who is provided by law to accept the declaration of nomination or petition for nomination for such office. Recall petitions for appointed state officers shall be filed with the secretary of state and for appointed county or municipal officers shall be filed with the county election administrator. Recall petitions for appointed officers from other political subdivisions shall be filed with the county election administrator if the boundaries of the political subdivisions lie wholly within one county or otherwise with the secretary of state.

(2) If the secretary of state, county election administrator or other filing official refuses to accept and file any petition for recall with the proper number of signatures of qualified electors, any elector may within 10 days after such refusal apply to the district court for a writ of mandamus. If it is determined that the petition is sufficient, the district court shall order the petition to be filed with a certified copy of the writ attached thereto, as of the date when it was originally offered for filing. On a showing that any filed petition is not sufficient, the court may enjoin certification, printing, or recall election.

(3) All such suits or appeals therefrom shall be advanced on the court docket and heard and decided by the court as expeditiously as possible.

(4) Any aggrieved party may file an appeal within 10 days after any adverse order or decision as provided by law.

History: En. Secs. 6, 12, I.M. No. 73, approved November 2, 1976; R.C.M. 1947, 59-616, 59-623; amd. Sec. 375, Ch. 571, L. 1979.

2-16-616. Form of recall petition. (1) The form of the recall petition must be substantially as follows:

WARNING

A person who knowingly signs a name other than the person's own to this petition, who signs the person's name more than once upon a petition to recall the same officer at one election, or who is not, at the time of signing this petition, a qualified elector of the state of Montana entitled to vote for the successor of the elected officer to be recalled or the successor or successors of the officer or officers who have the authority to appoint a person to the position held by the appointed officer to be recalled is punishable by a fine of no more than \$500 or imprisonment in the county jail for a term not to exceed 6 months, or both, or a fine of \$500 or imprisonment in the state prison for a term not to exceed 10 years, or both.

RECALL PETITION

To the Honorable, Secretary of State of the State of Montana (or name and office of other filing officer): We, the undersigned qualified electors of the State of Montana (or name of appropriate state-district or political subdivision) respectfully petition that an election be held as provided by law on the question of whether, holding the office of, should be recalled for the following reasons: (Setting out a general statement of the reasons for recall in not more than 200 words). Each signer certifies: I have personally signed this petition; I am a qualified elector of the state of Montana and (name of appropriate political subdivision); and my residence and post-office address are correctly written after my name to the best of my knowledge and belief.

(2) Numbered lines must follow the language in subsection (1). Each numbered line must contain spaces for the signature, post-office address, and printed last name of the signer. Each separate sheet of the petition must contain the heading and reasons for the proposed recall as prescribed in subsection (1).

History: En. Sec. 7, I.M. No. 73, approved November 2, 1976; amd. Sec. 5, Ch. 364, L. 1977; R.C.M. 1947, 59-617; amd. Sec. 112, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-16-617. Form of circulation sheets. (1) The signatures on each petition must be placed on sheets of paper known as circulation sheets. Each circulation sheet must be substantially 8 ½ x 14 inches or a continuous sheet may be folded so as to meet this size limitation. The circulation sheets must be ruled with a horizontal line 1 ½ inches from the top of the sheet. The space above the line must remain blank and must be for the purpose of binding.

(2) The petition, for purposes of circulation, may be divided into sections, each section to contain not more than 25 circulation sheets.

(3) Before a petition may be circulated for signatures, a sample circulation sheet must be submitted to the officer with whom the petition must be filed in the form in which it will be circulated. The filing officer shall review the petition for sufficiency as to form and approve or reject the form of the petition, stating the reasons for rejection, within 1 week of receiving the sheet.

(4) The petition form submitted must be accompanied by a written statement containing the reasons for the desired recall as stated on the petition. The truth of purported facts contained in the statement must be sworn to by at least one of the petitioners before a person authorized to administer oaths.

(5) The filing officer shall serially number all approved petitions continuously from year to year.

History: En. Sec. 8, I.M. No. 73, approved November 2, 1976; amd. Sec. 6, Ch. 364, L. 1977; R.C.M. 1947, 59-618; amd. Sec. 113, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-16-618. Forms not mandatory. The forms prescribed in this part are not mandatory, and if substantially followed, the petition shall be sufficient, notwithstanding clerical and merely technical errors.

History: En. Sec. 9, I.M. No. 73, approved November 2, 1976; R.C.M. 1947, 59-619.

2-16-619. Submission of circulation sheets — certification of signatures. (1) Signed circulation sheets or sections of a petition for recall must be submitted to the officer responsible for registration of electors in the county in which the signatures were obtained within 3 months of the date the form of the petition was approved under 2-16-617.

(2) An affidavit, in substantially the following form, must be attached to each circulation sheet or section submitted to the county officer:

(Name of person circulating petition), being first sworn, deposes and says: I circulated or assisted in circulating the petition to which this affidavit is attached, and I believe that the signatures on the petition are genuine and are the signatures of the persons whose names they purport to be and that the signers knew the contents of the petition before signing the petition.

..... (Signature)

Subscribed and sworn before me this day of, 20...

..... (Person authorized to take oaths)

Seal..... (Title or notarial information)

History: En. 59-621 by Sec. 8, Ch. 364, L. 1977; R.C.M. 1947, 59-621; amd. Sec. 4, Ch. 51, L. 1999.

2-16-620. County clerk to verify signatures. (1) The county clerk in each county in which a recall petition is signed shall verify and compare the signatures of each person who has signed the petition to ensure that the person is an elector in that county and, if satisfied that the signatures are genuine, shall certify that fact to the officer with whom the recall petition is to be filed, in substantially the following form:

To the Honorable, Secretary of State of the State of Montana (or name and title of other officer):

I,, (title) of County, certify that I have compared the signatures on sheets (specifying number of sheets) of the petition for recall No. attached, in the manner prescribed by law, and I believe (number) signatures are valid for the purpose of the petition. I further certify that the affidavit of the circulator of the (sheet) (section) of the petition is attached and that the post-office address is completed for each valid signature.

Signed: (Date) (Signature)
 Seal (Title)

(2) The certificate is prima facie evidence of the facts stated in the certificate, and the secretary of state or other officer receiving the recall petition may consider and count only the signatures that are certified. However, the officer with whom the recall petition is filed shall consider and count any remaining signatures of the registered voters that prove to be genuine, and those signatures must be considered and counted if they are attested to in the manner and form provided for initiative and referendum petitions.

(3) The county clerk and recorder may not retain any portion of a petition for more than 30 days following the receipt of that portion. At the expiration of that period, the county clerk and recorder shall certify the valid signatures on that portion of the petition and deliver the same to the person with whom the petition is required to be filed.

History: En. Sec. 11, I.M. No. 73, approved November 2, 1976; amd. Sec. 9, Ch. 364, L. 1977; R.C.M. 1947, 59-622; amd. Sec. 2, Ch. 159, L. 1983; amd. Sec. 114, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-16-621. Notification to officer — statement of justification. Upon filing the petition or a portion of the petition containing the number of valid signatures required under 2-16-614, the official with whom it is filed shall immediately give written notice to the officer named in the petition. The notice must state that a recall petition has been filed, must set forth the reasons contained in the petition, and must notify the officer named in the recall petition that the officer has the right to prepare and have printed on the ballot a statement containing not more than 200 words giving reasons why the officer should not be recalled. A statement of justification may not be printed on the ballot unless it is delivered to the filing official within 10 days of the date notice is given.

History: En. Sec. 14, I.M. No. 73, approved November 2, 1976; R.C.M. 1947, 59-625; amd. Sec. 3, Ch. 159, L. 1983; amd. Sec. 115, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-16-622. Resignation of officer — proclamation of election. (1) If the officer named in the petition for recall submits a resignation in writing, it must be accepted and become effective the day it is offered. The vacancy created by the resignation must be filled as provided by law. However, the officer named in the petition for recall may not be appointed to fill the vacancy. If the officer named in the petition for recall refuses to resign or does not resign within 5 days after the petition is filed, a special election must be called unless the filing is within 90 days of a general election, in which case the question must be placed on a separate ballot at the same time as the general election.

(2) The call of a special election must be made by the governor in the case of a state or state-district officer or by the board or officer empowered by law to call special elections for a political subdivision in the case of any officer of a political subdivision of the state.

History: En. Sec. 13, I.M. No. 73, approved November 2, 1976; amd. Sec. 10, Ch. 364, L. 1977; R.C.M. 1947, 59-624; amd. Sec. 116, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-16-623 through 2-16-630 reserved.

2-16-631. Notice of recall election. The notice of a recall election shall be in substantially the following form:

NOTICE OF RECALL ELECTION

Notice is hereby given pursuant to law that a recall election will be held on (Date) for the purpose of voting upon the recall of who holds the office of

DATED at, (Date)

History: En. Sec. 15, I.M. No. 73, approved November 2, 1976; amd. Sec. 11, Ch. 364, L. 1977; R.C.M. 1947, 59-626.

2-16-632. Conduct of special elections. A special election for recall shall be conducted and the results canvassed and certified in the same manner that the law in effect at the time of

the election for recall requires for an election to fill the office that is the subject of the recall petition, except as herein otherwise provided. In the case of an official holding a nonelective office, the election shall be conducted and the results canvassed and certified in the same manner that the law in effect at the time of the election for recall requires for an election to fill the office of the person who has the power to appoint such official. The powers and duties conferred or imposed by law upon boards of election, registration officers, canvassing boards, and other public officials who conduct general elections are conferred and imposed upon similar officers conducting recall elections under the provisions of this section together with the penalties prescribed for the breach thereof.

History: En. Sec. 18, I.M. No. 73, approved November 2, 1976; R.C.M. 1947, 59-629; amd. Sec. 2, Ch. 308, L. 1979.

2-16-633. Form of ballot. (1) The ballot at a recall election must set forth the statement contained in the recall petition stating the reasons for demanding the recall of the officer and the officer's statement of reasons why the officer should not be recalled. The question of whether the officer should be recalled must be placed on the ballot in a form similar to the following:

- ☐ FOR recalling who holds the office of
- ☐ AGAINST recalling who holds the office of

(2) The form of the ballot must be approved as provided in the election laws of this state.

History: En. Sec. 16, I.M. No. 73, approved November 2, 1976; amd. Sec. 12, Ch. 364, L. 1977; R.C.M. 1947, 59-627; amd. Sec. 117, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-16-634. Expenses of election. Expenses of a recall election shall be paid in the same manner as the expenses for any other election. The expenditure of such funds constitutes an emergency expenditure of funds, and the political subdivision affected may fund the costs of such an election through emergency funding procedures. In the event a recall election is held for a state or state-district officer, the legislature shall appropriate funds to reimburse the counties involved for costs incurred in running the election.

History: En. Sec. 19, I.M. No. 73, approved November 2, 1976; amd. Sec. 14, Ch. 364, L. 1977; R.C.M. 1947, 59-630.

2-16-635. Officer to remain in office until results declared — filling of vacancy. The officer named in the recall petition continues in office until the officer resigns or the results of the recall election are officially declared. If a majority of those voting on the question vote to remove the officer, the office becomes vacant and the vacancy must be filled as provided by law. However, the officer recalled may not be appointed to fill the vacancy.

History: En. Sec. 17, I.M. No. 73, approved November 2, 1976; amd. Sec. 13, Ch. 364, L. 1977; R.C.M. 1947, 59-628; amd. Sec. 118, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

CHAPTER 17 PROPERTY AND SYSTEMS DEVELOPMENT AND MANAGEMENT

Part 5 Information Technology — Internet Privacy

2-17-550. Short title. Sections 2-17-550 through 2-17-553 may be cited as the "Governmental Internet Information Privacy Act".

History: En. Sec. 1, Ch. 219, L. 2001.

2-17-551. Definitions. As used in 2-17-550 through 2-17-553, the following definitions apply:

(1) "Collect" means the gathering of personally identifiable information about a user of an internet service, online service, or website by or on behalf of the provider or operator of that service or website by any means, direct or indirect, active or passive, including:

(a) an online request for the information by the provider or operator, regardless of how the information is transmitted to the provider or operator;

(b) the use of an online service to gather the information; or

(c) tracking or use of any identifying code linked to a user of a service or website, including the use of cookies.

(2) “Governmental entity” means the state and political subdivisions of the state.

(3) “Government website operator” or “operator” means a governmental entity that operates a website located on the internet or an online service and that collects or maintains personal information from or about the users of or visitors to the website or online service or on whose behalf information is collected or maintained.

(4) “Internet” means, collectively, the myriad of computer and telecommunications facilities, including equipment and operating software, that comprise the interconnected worldwide network of networks that use the transmission control protocol/internet protocol or any predecessor or successor protocols to communicate information of all kinds by wire or radio.

(5) “Online” means any activity regulated by 2-17-550 through 2-17-553 that is effected by active or passive use of an internet connection, regardless of the medium by or through which the connection is established.

(6) “Personally identifiable information” means individually identifiable information about an individual collected online, including:

(a) a first and last name;

(b) a residence or other physical address, including a street name and name of a city or town;

(c) an e-mail address;

(d) a telephone number;

(e) a social security number; or

(f) unique identifying information that an internet service provider or a government website operator collects and combines with any information described in subsections (6)(a) through (6)(e).

(7) “Political subdivision” means any county, city, municipal corporation, school district, or other political subdivision or public corporation.

(8) “State” means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.

History: En. Sec. 2, Ch. 219, L. 2001.

2-17-552. Collection of personally identifiable information — requirements. (1) A government website operator may not collect personally identifiable information online from a website user unless the operator complies with the provisions of this section.

(2) A government website operator shall ensure that the website:

(a) identifies who operates the website;

(b) provides the address and telephone number at which the operator may be contacted as well as an electronic means for contacting the operator; and

(c) generally describes the operator’s information practices, including policies to protect the privacy of the user and the steps taken to protect the security of the collected information.

(3) In addition to the requirements of subsection (2), if the personally identifiable information may be used for a purpose other than the express purpose of the website or may be given or sold to a third party, except as required by law, then the operator shall ensure that the website includes:

(a) a clear and conspicuous notice to the user that the information collected could be used for other than the purposes of the website;

(b) a general description of the types of third parties that may obtain the information; and

(c) a clear, conspicuous, and easily understood online procedure requiring an affirmative expression of the user’s permission before the information is collected.

History: En. Sec. 3, Ch. 219, L. 2001.

2-17-553. No change of privacy right or public right to know. Sections 2-17-550 through 2-17-553 are not intended to expand or restrict the individual right of privacy or the

public right to know or to change the rights and obligations of persons, state agencies, or local governments that are otherwise provided by law.

History: En. Sec. 4, Ch. 219, L. 2001.

Part 6

Government Competition With Private Internet Providers

2-17-601. Statement of purpose — policy. (1) The legislature recognizes that access to affordable, high-speed internet services is critical to the state's economic future and that the planning, development, and delivery of quality internet services should be a coordinated effort among state government, local governments, and private enterprise.

(2) It is the policy of this state to:

(a) recognize that private sector enterprises engaged in the delivery of internet access and related services should have an opportunity to provide those services without undue interference or competition from the state or its political subdivisions; and

(b) encourage agencies and political subdivisions to publicly announce requirements for internet services and negotiate contracts for internet access with private enterprise to ensure that innovative technology is available to serve the public's needs at the most fair and reasonable cost.

History: En. Sec. 1, Ch. 547, L. 2001.

2-17-602. Definitions. As used in this part, the following definitions apply:

(1) "Agency" has the meaning provided for in 2-15-102.

(2) "Internet services provider" means a person or an entity that provides a service, available to the public, that enables the person's or entity's customers to access the internet, purchase internet server or file-hosting services, colocate internet equipment, or use data transmission over the internet for a fee.

(3) "Political subdivision" has the meaning provided for in 2-9-101.

History: En. Sec. 2, Ch. 547, L. 2001.

2-17-603. Government competition with private internet services providers prohibited — exceptions. (1) Except as provided in subsection (2)(a) or (2)(b), an agency or political subdivision of the state may not directly or through another agency or political subdivision be an internet services provider.

(2) (a) An agency or political subdivision may act as an internet services provider if:

(i) no private internet services provider is available within the jurisdiction served by the agency or political subdivision; or

(ii) the agency or political subdivision provided services prior to July 1, 2001.

(b) An agency or political subdivision may act as an internet services provider when providing advanced services that are not otherwise available from a private internet services provider within the jurisdiction served by the agency or political subdivision.

(c) If a private internet services provider elects to provide internet services in a jurisdiction where an agency or political subdivision is providing internet services, the private internet services provider shall inform the agency or the political subdivision in writing at least 30 days in advance of offering internet services.

(3) Upon receiving notice pursuant to subsection (2)(c), the agency or political subdivision shall notify its subscribers within 30 days of the intent of the private internet services provider to begin providing internet services and may choose to discontinue providing internet services within 180 days of the notice.

(4) Nothing in this section may be construed to prohibit an agency or political subdivision from:

(a) offering electronic government services to the general public; or

(b) acquiring access to the internet from a private internet services provider in order to offer electronic government services to the general public.

History: En. Sec. 3, Ch. 547, L. 2001.

2-17-604. Alternatives to public internet services providers. An agency or political subdivision is encouraged to publish its requirements for internet services and to use, to the

maximum extent possible, private internet services providers to deliver internet services to the public.

History: En. Sec. 4, Ch. 547, L. 2001.

CHAPTER 18 STATE EMPLOYEE CLASSIFICATION, COMPENSATION, AND BENEFITS

Part 5 Travel, Meals, and Lodging

2-18-501. Meals, lodging, and transportation of persons in state service. All elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees must be reimbursed for meals and lodging while away from the person's designated headquarters and engaged in official state business in accordance with the following provisions:

(1) Except as provided under subsection (3), for travel within the state of Montana, lodging must be authorized at the actual cost of lodging, not exceeding \$35 per day, and taxes on the allowable cost of lodging, except as provided in subsection (3), plus \$5 for the morning meal, \$6 for the midday meal, and \$12 for the evening meal. All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) Except as provided in subsection (3), for travel outside the state of Montana and within the United States, the following provisions apply:

(a) Lodging must be reimbursed at actual cost, not to exceed the prescribed maximum standard federal rate per day for the location involved plus taxes on the allowable cost.

(b) Meal reimbursement may not exceed the prescribed maximum standard federal rate per meal.

(3) The department shall designate the locations and circumstances under which the governor, other elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees may be authorized the actual cost of lodging when the actual cost exceeds the maximum established in subsection (1) or (2)(a).

(4) For travel to a foreign country, the following provisions apply:

(a) All elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees must be reimbursed for the cost of meals and lodging within the rates established by the department of administration when traveling in the normal course of their duties to designated areas. The department shall use the United States department of state maximum travel per diem allowances for foreign areas in establishing the rates.

(b) All claims for lodging reimbursement allowed under this subsection (4) must be documented by an appropriate receipt.

(5) When other than commercial, nonreceiptable lodging facilities are used by a state official or employee while conducting official state business in a travel status, the amount of \$12 is authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1)(a) or (2)(a). However, when overnight accommodations are provided at the expense of a government entity, reimbursement may not be claimed for lodging.

(6) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status is subject to reimbursement.

(7) The provisions of this section may not be construed as affecting the validity of 5-2-301.

(8) The department of administration shall establish policies necessary to effectively administer this section for state government.

(9) All commercial air travel must be by the least expensive class service available.

History: En. Sec. 2, Ch. 66, L. 1955; amd. Sec. 1, Ch. 207, L. 1957; amd. Sec. 1, Ch. 108, L. 1961; amd. Sec. 1, Ch. 116, L. 1963; amd. Sec. 1, Ch. 48, L. 1967; amd. Sec. 1, Ch. 273, L. 1969; amd. Sec. 1, Ch. 10, L. 1971; amd. Ch. 295, L. 1971; amd. Sec. 3, Ch. 495, L. 1973; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 1, Ch. 439, L. 1975; amd. Sec.

1, Ch. 483, L. 1977; R.C.M. 1947, 59-538; amd. Sec. 1, Ch. 643, L. 1979; amd. Sec. 1, Ch. 338, L. 1981; amd. Sec. 1, Ch. 582, L. 1981; amd. Sec. 13, Ch. 575, L. 1981; amd. Sec. 1, Ch. 646, L. 1983; amd. Sec. 1, Ch. 399, L. 1987; amd. Sec. 5, Ch. 83, L. 1989; amd. Sec. 1, Ch. 207, L. 1989; amd. Sec. 1, Ch. 561, L. 1991; amd. Sec. 1, Ch. 439, L. 1997.

2-18-502. Computation of meal allowance. (1) Except as provided in subsections (2) and (4), an employee is eligible for the meal allowance provided in 2-18-501, only if the employee is in a travel status for more than 3 continuous hours during the following hours:

- (a) for the morning meal allowance, between the hours of 12:01 a.m. and 10 a.m.;
- (b) for the midday meal allowance, between the hours of 10:01 a.m. and 3 p.m.; and
- (c) for the evening meal allowance, between the hours of 3:01 p.m. and 12 midnight.

(2) An eligible employee may receive:

(a) only one of the three meal allowances provided, if the travel was performed within the employee's assigned travel shift; or

(b) a maximum of two meal allowances if the travel begins before or was completed after the employee's assigned travel shift and the travel did not exceed 24 hours.

(3) "Travel shift" is that period of time beginning 1 hour before and terminating 1 hour after the employee's normally assigned work shift.

(4) An appointed member of a state board, commission, or council or a member of a legislative subcommittee or select or interim committee is entitled to a midday meal allowance on a day the individual is attending a meeting of the board, commission, council, or committee, regardless of proximity of the meeting place to the individual's residence or headquarters. This subsection does not apply to a member of a legislative committee during a legislative session.

(5) The department of administration shall prescribe policies necessary to effectively administer this section for state government.

History: En. Sec. 3, Ch. 66, L. 1955; amd. Sec. 4, Ch. 495, L. 1973; amd. Sec. 1, Ch. 213, L. 1974; amd. Sec. 2, Ch. 439, L. 1975; amd. Sec. 2, Ch. 483, L. 1977; R.C.M. 1947, 59-539; amd. Sec. 1, Ch. 123, L. 1983; amd. Sec. 2, Ch. 439, L. 1997.

2-18-503. Mileage — allowance. (1) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds when using their own motor vehicles in the performance of official duties are entitled to collect mileage for the distance actually traveled by motor vehicle and no more unless otherwise specifically provided by law.

(2) (a) When a state officer or employee is authorized to travel by motor vehicle and chooses to use a privately owned motor vehicle even though a government-owned or government-leased motor vehicle is available, the officer or employee may be reimbursed only at the rate of 48.15% of the mileage rate allowed by the United States internal revenue service for the current year.

(b) When a privately owned motor vehicle is used because a government-owned or government-leased motor vehicle is not available or because the use is in the best interest of the governmental entity and a notice of unavailability of a government-owned or government-leased motor vehicle or a specific exemption is attached to the travel claim, then a rate equal to the mileage allotment allowed by the United States internal revenue service for the current year must be paid for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.

(3) Members of the legislature, jurors, witnesses, county agents, and all other persons, except a state officer or employee, who may be entitled to mileage paid from public funds when using their own motor vehicles in the performance of official duties are entitled to collect mileage at a rate equal to the mileage allotment allowed by the United States internal revenue service for the current year for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.

(4) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds when using their own airplanes in the performance of official duties are entitled to collect mileage for the nautical air miles actually traveled at a rate of twice the mileage allotment for motor vehicle travel and no more unless specifically provided by law.

(5) This section does not alter 5-2-301.

(6) The department of administration shall prescribe policies necessary for the effective administration of this section for state government. The Montana Administrative Procedure Act, Title 2, chapter 4, does not apply to policies prescribed to administer this part.

History: En. Sec. 4590, Pol. C. 1895; re-en. Sec. 3111, Rev. C. 1907; re-en. Sec. 4884, R.C.M. 1921; amd. Sec. 1, Ch. 16, L. 1933; re-en. Sec. 4884, R.C.M. 1935; amd. Sec. 1, Ch. 121, L. 1941; amd. Sec. 1, Ch. 201, L. 1947; amd. Sec. 1, Ch. 93, L. 1949; amd. Sec. 1, Ch. 124, L. 1951; amd. Sec. 1, Ch. 106, L. 1961; amd. Sec. 1, Ch. 123, L. 1963; amd. Sec. 2, Ch. 48, L. 1967; amd. Sec. 1, Ch. 495, L. 1973; amd. Sec. 9, Ch. 355, L. 1974; amd. Sec. 3, Ch. 439, L. 1975; amd. Sec. 1, Ch. 532, L. 1975; amd. Sec. 1, Ch. 453, L. 1977; R.C.M. 1947, 59-801; amd. Sec. 1, Ch. 622, L. 1979; amd. Sec. 3, Ch. 439, L. 1997; amd. Sec. 8, Ch. 558, L. 1999; amd. Sec. 1, Ch. 4, Sp. L. August 2002; amd. Sec. 1, Ch. 112, L. 2005; amd. Sec. 1, Ch. 40, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 40 in (2)(a) near beginning after "employee" deleted "including a legislator on legislative business"; in (3) near beginning after "legislature" deleted "while traveling between their residences and Helena"; and made minor changes in style. Amendment effective March 22, 2007.

2-18-504. Mileage computed by shortest traveled route. Wherever mileage is allowed to any sheriff or other officer, juror, witness, or other person under any law of Montana, the same shall be computed according to the shortest traveled route, when such shortest route is passable.

History: En. Sec. 1, Ch. 7, L. 1919; re-en. Sec. 4901, R.C.M. 1921; re-en. Sec. 4901, R.C.M. 1935; R.C.M. 1947, 25-217.

2-18-505 through 2-18-510 reserved.

2-18-511. Claim for expenses. Every such person so engaged shall periodically submit a claim containing a schedule of expenses and amounts claimed for said period. Said schedule shall show in what capacity such person was engaged each day while away from the department in which said daily duties arose and shall show expense items of each day in detail, such as the amount of per diem allowance claimed, transportation fare, mileage, and other such items.

History: En. Sec. 4, Ch. 66, L. 1955; amd. Sec. 26, Ch. 97, L. 1961; R.C.M. 1947, 59-540.

2-18-512. Prohibition on travel expenses for conventions — exception. A state officer or employee of the state may not receive payment from any public funds for traveling expenses or other expenses for attendance at any convention, meeting, or other gathering of public officers except for attendance at a convention, meeting, or other gatherings that the officer or employee may by virtue of the office or employment find it necessary to attend.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; R.C.M. 1947, 25-508(part); amd. Sec. 122, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

Part 6 Leave Time

2-18-601. Definitions. For the purpose of this part, except 2-18-620, the following definitions apply:

(1) (a) "Agency" means any legally constituted department, board, or commission of state, county, or city government or any political subdivision of the state.

(b) The term does not mean the state compensation insurance fund.

(2) "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.

(3) "Common association" means an association of employees established pursuant to 2-18-1310 for the purposes of employer and employee participation in the plan.

(4) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(5) "Contracting employer" means an employer who, pursuant to 2-18-1310, has contracted with the department of administration to participate in the plan.

(6) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, persons contracted as independent contractors or hired under personal services contracts, and student interns.

(7) “Full-time employee” means an employee who normally works 40 hours a week.

(8) “Holiday” means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.

(9) “Member” means an employee who belongs to a voluntary employees’ beneficiary association established under 2-18-1310.

(10) “Part-time employee” means an employee who normally works less than 40 hours a week.

(11) “Permanent employee” means a permanent employee as defined in 2-18-101.

(12) “Plan” means the employee welfare benefit plan established under Internal Revenue Code section 501(c)(9) pursuant to 2-18-1304.

(13) “Seasonal employee” means a seasonal employee as defined in 2-18-101.

(14) “Short-term worker” means:

(a) for the executive and judicial branches, a short-term worker as defined in 2-18-101; or

(b) for the legislative branch, an individual who:

(i) is hired by a legislative agency for an hourly wage established by the agency;

(ii) may not work for the agency for more than 6 months in a continuous 12-month period;

(iii) is not eligible for permanent status;

(iv) may not be hired into another position by the agency without a competitive selection process; and

(v) is not eligible to earn the leave and holiday benefits provided in this part or the group insurance benefits provided in part 7.

(15) “Sick leave” means a leave of absence with pay for:

(a) a sickness suffered by an employee or a member of the employee’s immediate family; or

(b) the time that an employee is unable to perform job duties because of:

(i) a physical or mental illness, injury, or disability;

(ii) maternity or pregnancy-related disability or treatment, including prenatal care, birth, or medical care for the employee or the employee’s child;

(iii) parental leave for a permanent employee as provided in 2-18-606;

(iv) quarantine resulting from exposure to a contagious disease;

(v) examination or treatment by a licensed health care provider;

(vi) short-term attendance, in an agency’s discretion, to care for a relative or household member not covered by subsection (15)(a) until other care can reasonably be obtained;

(vii) necessary care for a spouse, child, or parent with a serious health condition, as defined in the Family and Medical Leave Act of 1993; or

(viii) death or funeral attendance of an immediate family member or, at an agency’s discretion, another person.

(16) “Student intern” means a student intern as defined in 2-18-101.

(17) “Temporary employee” means a temporary employee as defined in 2-18-101.

(18) “Transfer” means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

(19) “Vacation leave” means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer.

History: En. Sec. 1, Ch. 476, L. 1973; R.C.M. 1947, 59-1007.1; amd. Sec. 30, Ch. 184, L. 1979; amd. Sec. 3, Ch. 568, L. 1979; amd. Sec. 1, Ch. 178, L. 1981; amd. Sec. 1, Ch. 260, L. 1991; amd. Sec. 2, Ch. 756, L. 1991; amd. Sec. 7, Ch. 339, L. 1997; amd. Sec. 2, Ch. 314, L. 2001; amd. Sec. 1, Ch. 11, L. 2005; amd. Sec. 3, Ch. 75, L. 2005; amd. Sec. 1, Ch. 582, L. 2005; amd. Sec. 1, Ch. 503, L. 2007.

Compiler’s Comments

2007 Amendment: Chapter 503 inserted definitions of common association, contracting employer, member, and plan; and made minor changes in style. Amendment effective July 1, 2007.

2-18-602. Repealed. Sec. 12, Ch. 568, L. 1979.

History: En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R.C.M. 1921; Cal. Pol. C. Sec. 1030; amd. Sec. 1, Ch. 5, L. 1931; re-en. Sec. 453, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1951; amd. Sec. 1, Ch. 253, L. 1957; amd. Sec. 1, Ch. 2, L. 1961; R.C.M. 1947, 59-510(1)(part).

2-18-603. Holidays — observance when falling on employee’s day off. (1) (a) A full-time employee who is scheduled for a day off on a day that is observed as a legal holiday, except Sundays, is entitled to receive a day off with pay either on the day preceding the holiday or on another day following the holiday in the same pay period or as scheduled by the employee and

the employee's supervisor, whichever allows a day off in addition to the employee's regularly scheduled days off, provided the employee is in a pay status on the employee's last regularly scheduled working day immediately before the holiday or on the employee's first regularly scheduled working day immediately after the holiday.

(b) Part-time employees receive pay for the holiday on a prorated basis according to rules adopted by the department of administration or appropriate administrative officer under 2-18-604.

(c) A short-term worker may not receive holiday pay.

(2) For purposes of this section, the term "employee" does not include nonteaching school district employees.

History: En. Sec. 1, Ch. 108, L. 1971; R.C.M. 1947, 59-1009; amd. Sec. 4, Ch. 568, L. 1979; amd. Sec. 1, Ch. 312, L. 1981; amd. Sec. 8, Ch. 339, L. 1997.

2-18-604. Administration of rules. The department of administration or the administrative officer of any county, city, or political subdivision is responsible for the proper administration of the employee annual, sick, or military leave provisions and the jury duty provisions found in this part and may, when necessary, promulgate rules necessary to achieve the uniform administration of these provisions and to prevent the abuse of these provisions. When promulgated, the rules are effective as to all employees of the state or any county, city, or political subdivision of the state.

History: En. Sec. 10, Ch. 568, L. 1979; amd. Sec. 2, Ch. 582, L. 2005.

2-18-605. Repealed. Sec. 13, Ch. 339, L. 1997.

History: En. Sec. 2, Ch. 178, L. 1981.

2-18-606. Parental leave for state employees. (1) The department of administration shall develop a parental leave policy for permanent state employees. The policy must permit an employee to take a reasonable leave of absence and permit the employee to use sick leave immediately following the birth or placement of a child for a period not to exceed 15 working days if:

- (a) the employee is adopting a child; or
- (b) the employee is a birth father.

(2) As used in this section, "placement" means placement for adoption as defined in 33-22-130.

(3) A state agency that is not subject to the provisions of the Family and Medical Leave Act of 1993, 29 U.S.C. 2601 through 2654, may extend the provisions of that act to the employees of the agency.

History: En. Sec. 1, Ch. 756, L. 1991; amd. Sec. 1, Ch. 2, L. 1997; amd. Sec. 158, Ch. 480, L. 1997.

2-18-607 through 2-18-610 reserved.

2-18-611. Annual vacation leave. (1) Each permanent full-time employee shall earn annual vacation leave credits from the first day of employment. Vacation leave credits earned must be credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of 6 calendar months.

(2) Seasonal employees earn vacation credits. However, seasonal employees must be employed for 6 qualifying months before they may use the vacation credits. In order to qualify, seasonal employees shall immediately report back for work when operations resume in order to avoid a break in service.

(3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have worked the qualifying period.

(4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status.

(5) Temporary employees earn vacation leave credits but may not use the credits until after working for 6 qualifying months.

(6) A short-term worker or a student intern, as both terms are defined in 2-18-601, may not earn vacation leave credits, and time worked as a short-term worker or as a student intern does not apply toward the person's rate of earning vacation leave credits.

History: En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. Sec. 2, Ch. 476, L. 1973; amd. Sec. 1, Ch. 62, L. 1975; amd. Sec. 1, Ch. 479, L. 1977; R.C.M. 1947, 59-1001(1), (4); amd. Sec. 5, Ch. 568, L. 1979; amd. Sec. 1, Ch. 280, L. 1983; amd. Sec. 2, Ch. 593, L. 1985; amd. Sec. 1, Ch. 328, L. 1987; amd. Sec. 9, Ch. 339, L. 1997; amd. Sec. 2, Ch. 11, L. 2005; amd. Sec. 4, Ch. 75, L. 2005.

2-18-612. Rate earned. (1) Vacation leave credits are earned at a yearly rate calculated in accordance with the following schedule, which applies to the total years of an employee's employment with any agency whether the employment is continuous or not:

Years of employment	Working days credit
1 day through 10 years	15
10 years through 15 years	18
15 years through 20 years	21
20 years or more	24

(2) (a) For the purpose of determining years of employment under this section, an employee eligible to earn vacation credits under 2-18-611 must be credited with 1 year of employment for each period of:

(i) 2,080 hours of service following the date of employment. An employee must be credited with 80 hours of service for each biweekly pay period in which the employee is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period.

(ii) 12 calendar months in which the employee was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any 1 month. An employee of a school district, a school at a state institution, or the university system must be credited with 1 year of service if the employee is employed for an entire academic year.

(b) State agencies, other than the university system and a school at a state institution, shall use the method provided in subsection (2)(a)(i) to calculate years of service under this section.

History: En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. Sec. 2, Ch. 476, L. 1973; amd. Sec. 1, Ch. 62, L. 1975; amd. Sec. 1, Ch. 479, L. 1977; R.C.M. 1947, 59-1001(3); amd. Sec. 6, Ch. 568, L. 1979; amd. Sec. 3, Ch. 593, L. 1985; amd. Sec. 123, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-18-613. Repealed. Sec. 12, Ch. 568, L. 1979.

History: En. Sec. 4, Ch. 131, L. 1949; amd. Sec. 4, Ch. 350, L. 1969; R.C.M. 1947, 59-1004.

2-18-614. Military leave considered service. A period of absence from employment with the state, county, or city occurring either during a war involving the United States or in any other national emergency and for 90 days thereafter for one of the following reasons is considered as service for the purpose of determining the number of years of employment used in calculating vacation leave credits under this section:

- (1) having been ordered on active duty with the armed forces of the United States;
- (2) voluntary service on active duty in the armed forces or on ships operated by or for the United States government; or
- (3) direct assignment to the United States department of defense for duties related to national defense efforts if a leave of absence has been granted by the employer.

History: En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. Sec. 2, Ch. 476, L. 1973; amd. Sec. 1, Ch. 62, L. 1975; amd. Sec. 1, Ch. 479, L. 1977; R.C.M. 1947, 59-1001(2).

2-18-615. Absence because of illness not chargeable against vacation unless employee approves. Absence from employment by reason of illness shall not be chargeable against unused vacation leave credits unless approved by the employee.

History: En. Sec. 5, Ch. 131, L. 1949; amd. Sec. 5, Ch. 350, L. 1969; amd. Sec. 4, Ch. 476, L. 1973; R.C.M. 1947, 59-1005.

2-18-616. Determination of vacation dates. The dates when employees' annual vacation leaves are granted must be determined by agreement between each employee and the employing agency with regard to the best interest of the state or any county or city of the state as well as the best interests of each employee.

History: En. Sec. 6, Ch. 131, L. 1949; R.C.M. 1947, 59-1006; amd. Sec. 124, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-18-617. Accumulation of leave — cash for unused — transfer. (1) (a) Except as provided in subsection (1)(b), annual vacation leave may be accumulated to a total not to exceed two times the maximum number of days earned annually as of the end of the first pay period of the next calendar year. Excess vacation time is not forfeited if taken within 90 calendar days from the last day of the calendar year in which the excess was accrued.

(b) It is the responsibility of the head of an employing agency to provide reasonable opportunity for an employee to use rather than forfeit accumulated vacation leave. If an employee makes a reasonable written request to use excess vacation leave before the excess vacation leave must be forfeited under subsection (1)(a) and the employing agency denies the request, the excess vacation leave is not forfeited and the employing agency shall ensure that the employee may use the excess vacation leave before the end of the calendar year in which the leave would have been forfeited under subsection (1)(a).

(2) (a) An employee who terminates employment for a reason not reflecting discredit on the employee and who has worked the qualifying period set forth in 2-18-611 is entitled upon the date of termination to either:

(i) cash compensation for unused vacation leave if the employee is not subject to subsection (2)(a)(ii); or

(ii) conversion of the employee's unused vacation leave balance to an employer contribution to an employee welfare benefit plan health care expense trust account established pursuant to 2-18-1304 if:

(A) the employee is a member who belongs to a voluntary employees' beneficiary association established under 2-18-1310; and

(B) the contracting employer has entered into an agreement with members of the common association for an employer contribution based on unused vacation leave provided for in 2-18-611.

(b) Vacation leave contributed to the sick leave fund, provided for in 2-18-618, is nonrefundable and is not eligible for cash compensation upon termination.

(3) If an employee transfers between agencies of the same jurisdiction, cash compensation may not be paid for unused vacation leave. In a transfer, the receiving agency assumes the liability for the accrued vacation credits transferred with the employee.

(4) An employee may contribute accumulated vacation leave to a nonrefundable sick leave fund provided for in 2-18-618. The department of administration shall, in consultation with the state employee group benefits advisory council, provided for in 2-15-1016, adopt rules to implement this subsection.

(5) This section does not prohibit a school district from providing cash compensation for unused vacation leave in lieu of the accumulation of the leave, either through a collective bargaining agreement or, in the absence of a collective bargaining agreement, through a policy.

History: (1)En. Sec. 2, Ch. 131, L. 1949; amd. Sec. 2, Ch. 350, L. 1969; amd. Sec. 2, Ch. 121, L. 1971; amd. Sec. 1, Ch. 148, L. 1974; Sec. 59-1002, R.C.M. 1947; (2), (3)En. Sec. 3, Ch. 131, L. 1949; amd. Sec. 3, Ch. 350, L. 1969; amd. Sec. 3, Ch. 476, L. 1973; Sec. 59-1003, R.C.M. 1947; R.C.M. 1947, 59-1002, 59-1003; amd. Sec. 1, Ch. 548, L. 1979; amd. Sec. 7, Ch. 568, L. 1979; amd. Sec. 1, Ch. 115, L. 1993; amd. Sec. 1, Ch. 143, L. 1997; amd. Sec. 1, Ch. 47, L. 2007; amd. Sec. 2, Ch. 503, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 47 inserted (2)(b) providing that vacation leave contributed to the sick leave fund is nonrefundable and not eligible for cash compensation upon termination; inserted (4) allowing contribution of vacation leave to the sick leave fund; and made minor changes in style. Amendment effective July 1, 2007.

Chapter 503 in (2)(a) in introductory clause near middle after "the employee" inserted "and who has worked the qualifying period set forth in 2-18-611" and at end inserted "either"; in (2)(a)(i) after "leave" substituted "if the employee is not subject to subsection (2)(a)(ii)" for "assuming that the employee has worked the qualifying period set forth in 2-18-611"; inserted (2)(a)(ii) providing when an employee is entitled to conversion of unused vacation leave balance to an employer contribution to health care expense trust account; and made minor changes in style. Amendment effective July 1, 2007.

2-18-618. Sick leave. (1) A permanent full-time employee earns sick leave credits from the first day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours)

equals 1 year. Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned at the rate of 12 working days for each year of service without restriction as to the number of working days that may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.

(2) An employee may not accrue sick leave credits while in a leave-without-pay status.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) A short-term worker may not earn sick leave credits.

(6) Except as otherwise provided in 2-18-1311, an employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave must be computed on the basis of the employee's salary or wage at the time the employee terminates employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any sick leave rights or benefits accrued prior to July 1, 1971. However, when an employee transfers between agencies within the same jurisdiction, the employee is not entitled to a lump-sum payment. In a transfer between agencies, the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(7) An employee who receives a lump-sum payment pursuant to this section or who, pursuant to 2-18-1311, converts unused sick leave to employer contributions to a health care expense trust account and who is again employed by any agency may not be credited with sick leave for which the employee has previously been compensated or for which the employee has received an employer contribution to the health care expense trust account.

(8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.

(9) An employee of a state agency may contribute any portion of the employee's accumulated sick leave or accumulated vacation leave to a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an extensive illness or accident exhausts the employee's accumulated sick leave, irrespective of the employee's membership or nonmembership in the employee welfare benefit plan established pursuant to 2-18-1304. The department of administration shall, in consultation with the state employee group benefits advisory council, provided for in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.

(10) A local government may establish and administer through local rule a sick leave fund into which its employees may contribute a portion of their accumulated sick leave or vacation leave.

History: En. 59-1008 by Sec. 1, Ch. 93, L. 1971; amd. Sec. 5, Ch. 476, L. 1973; amd. Sec. 1, Ch. 309, L. 1975; R.C.M. 1947, 59-1008; amd. Sec. 8, Ch. 568, L. 1979; amd. Sec. 2, Ch. 280, L. 1983; amd. Sec. 1, Ch. 707, L. 1985; amd. Sec. 2, Ch. 328, L. 1987; amd. Sec. 1, Ch. 414, L. 1989; amd. Sec. 1, Ch. 25, L. 1991; amd. Sec. 2, Ch. 758, L. 1991; amd. Sec. 10, Ch. 339, L. 1997; amd. Sec. 11, Ch. 272, L. 2001; amd. Sec. 2, Ch. 47, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 47 in (9) near beginning of first sentence after "sick leave" inserted "or accumulated vacation leave"; and in (10) at end after "sick leave" inserted "or vacation leave". Amendment effective July 1, 2007.

2-18-619. Jury duty — service as witness. (1) Each employee who is under proper summons as a juror shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Juror fees must be applied against the amount due the employee from the employer. However, if an employee elects to use annual leave to serve on a jury, the employee may not be required to remit the juror fees to the employer. An employee is not required to remit to the employer any expense or mileage allowance paid by the court.

(2) An employee subpoenaed to serve as a witness shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Witness fees must be applied against the amount due the employee from the employer. However,

if an employee elects to use annual leave to serve as a witness, the employee may not be required to remit the witness fees to the employer. An employee is not required to remit to the employer any expense or mileage allowances paid by the court.

(3) Employers may request the court to excuse their employees from jury duty if they are needed for the proper operation of a unit of state or local government.

History: En. Sec. 6, Ch. 476, L. 1973; amd. Sec. 1, Ch. 154, L. 1974; R.C.M. 1947, 59-1010; amd. Sec. 9, Ch. 568, L. 1979; amd. Sec. 125, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

2-18-620. Mandatory leave of absence for employees holding public office — return requirements. (1) Employers of employees elected or appointed to a public office in the city, county, or state shall grant such employees leaves of absence, not to exceed 180 days per year, while they are performing public service. Employees of an employer who employs 10 or more persons must, upon complying with the requirements of subsection (2), be restored to their positions, with the same seniority, status, compensation, hours, locality, and benefits as existed immediately prior to their leaves of absence for public service under this section.

(2) Employees granted a leave shall make arrangements to return to work within 10 days following the completion of the service for which the leave was granted unless they are unable to do so because of illness or disabling injury certified to by a licensed physician.

(3) Any unemployment benefits paid to any person by application of this section shall not be charged against any employer under the unemployment insurance law.

History: En. 59-1011, 59-1012 by Secs. 1, 2, Ch. 107, L. 1975; R.C.M. 1947, 59-1011, 59-1012; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 692, L. 1991.

2-18-621. Unlawful termination — unlawful payments. (1) It is unlawful for an employer to terminate or separate an employee from employment in an attempt to circumvent the provisions of 2-18-611, 2-18-612, and 2-18-614. If a question arises under this subsection, it must be submitted to arbitration as provided in Title 27, chapter 5, as if an agreement described in 27-5-114 is in effect, unless there is an applicable collective bargaining agreement to the contrary.

(2) (a) An employee who terminates employment is entitled to receive only:

(i) payments for accumulated wages, vacation leave as provided in 2-18-617, sick leave as provided in 2-18-618, and compensatory time earned as provided in the rules or policies of the employer; and

(ii) if the termination is the result of a reduction in force, severance pay and a retraining allowance as provided for in 2-18-622.

(b) An employee who terminates employment may not receive severance pay, a bonus, or any other type of monetary payment not described in subsection (2)(a)(i) or (2)(a)(ii).

(3) Subsection (2) does not apply to:

(a) retirement benefits;

(b) a payment, settlement, award, or judgment that involves a potential or actual cause of action, legal dispute, claim, grievance, contested case, or lawsuit; or

(c) any other payment authorized by law.

History: En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. Sec. 2, Ch. 476, L. 1973; amd. Sec. 1, Ch. 62, L. 1975; amd. Sec. 1, Ch. 479, L. 1977; R.C.M. 1947, 59-1001(5); amd. Sec. 22, Ch. 684, L. 1985; amd. Sec. 126, Ch. 61, L. 2007; amd. Sec. 1, Ch. 341, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

Chapter 341 inserted (2) providing that employee who terminates employment is entitled to receive payments for accumulated wages, vacation leave, sick leave, and compensatory time earned and, if termination caused by reduction in force, severance pay and retraining allowance and providing that employee who terminates employment may not receive severance pay, bonus, or other type of monetary payment; inserted (3) providing that payments do not include retirement benefits, payment, settlement, award, or judgment involving potential or actual cause of action, legal dispute, claim, grievance, contested case, or lawsuit or other payment authorized by law; and made minor changes in style. Amendment effective April 27, 2007.

2-18-622. Reduction in force — severance pay and retraining allowance required. If a reduction in force is necessary, the state may provide severance pay and a retraining

allowance. Within a collective bargaining unit, severance pay and the retraining allowance are negotiable subjects under 39-31-305.

History: En. Sec. 1, Ch. 758, L. 1991; amd. Sec. 8, Ch. 640, L. 1993; (3)En. Sec. 13, Ch. 640, L. 1993.

2-18-623 through 2-18-625 reserved.

2-18-626. Department of justice employees — payment of compensation for time spent answering subpoena. A department of justice employee must receive all regular duty pay and benefits for time spent answering a subpoena in a civil or criminal cause when called to testify in connection with the employee's official duties. The department of justice may bill the person or organization requesting issuance of the subpoena for reimbursement for the employee's time.

History: En. Sec. 1, Ch. 363, L. 1987.

2-18-627. Paid leave for disaster relief volunteer service. (1) An agency may grant to a state employee up to 15 days in a calendar year of a paid leave of absence for the employee to participate in specialized disaster relief services for the American red cross if:

- (a) the employee is a certified American red cross disaster relief volunteer; and
- (b) the American red cross has requested the employee's services.

(2) Leave time granted pursuant to this section:

(a) must be paid at the regular rate of compensation, including regular group, retirement, or leave accrual benefits, for the regular work hours during which the employee is absent from the employee's regular duties;

(b) commences upon approval of the employee's employing agency; and

(c) may not be charged against any other leave to which the employee is entitled.

(3) For purposes of this section, the following definitions apply:

(a) "Agency" has the meaning provided in 2-18-101.

(b) "Employee" means any person employed by an agency, except an elected official.

History: En. Sec. 1, Ch. 225, L. 1999.

2-18-628 through 2-18-640 reserved.

2-18-641. Exemption — employees of certain county hospitals or rest homes and hospital districts. (1) An employee of a county hospital or county rest home in a third, fourth, fifth, sixth, or seventh class county or an employee of a hospital district is exempt from the provisions of this part.

(2) For any reduction in leave benefits for an employee subject to subsection (1), there must be an increase in compensation or benefits.

History: En. Sec. 1, Ch. 559, L. 2001.

Part 7 Group Insurance Generally

2-18-701. Definition. As used in this part, the following definitions apply:

(1) "Dependent" has the meaning provided in 33-22-140.

(2) (a) "Employee", as the term applies to a person employed in the executive, judicial, or legislative branches of state government, means:

(i) a permanent full-time employee, as provided in 2-18-601;

(ii) a permanent part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week;

(iii) a seasonal full-time employee, as provided in 2-18-601, who is regularly scheduled to work 6 months or more a year or who works for a continuous period of more than 6 months a year although not regularly scheduled to do so;

(iv) a seasonal part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week for 6 months or more a year or who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so;

(v) elected officials;

(vi) officers and permanent employees of the legislative branch;

(vii) judges and permanent employees of the judicial branch;

(viii) academic, professional, and administrative personnel having individual contracts under the authority of the board of regents of higher education or the state board of public education;

(ix) a temporary full-time employee, as provided in 2-18-601:

(A) who is regularly scheduled to work more than 6 months a year;

(B) who works for a continuous period of more than 6 months a year although not regularly scheduled to do so; or

(C) whose temporary status is defined through collective bargaining;

(x) a temporary part-time employee, as provided in 2-18-601:

(A) who is regularly scheduled to work 20 hours or more a week for 6 months or more a year;

(B) who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so; or

(C) whose temporary status is defined through collective bargaining; and

(xi) a part-time or full-time employee of the state compensation insurance fund. As used in this subsection, "part-time or full-time employee of the state compensation insurance fund" means an employee eligible for inclusion in the state employee group benefit plans under the rules of the department of administration.

(b) The term does not include a student intern, as defined in 2-18-101.

History: En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967; amd. Sec. 1, Ch. 220, L. 1969; amd. Sec. 1, Ch. 382, L. 1971; amd. Sec. 1, Ch. 188, L. 1974; amd. Sec. 1, Ch. 359, L. 1975; amd. Sec. 1, Ch. 437, L. 1975; amd. Sec. 1, Ch. 259, L. 1977; amd. Sec. 11, Ch. 563, L. 1977; R.C.M. 1947, 11-1024(5); amd. Sec. 12, Ch. 678, L. 1979; amd. Sec. 6, Ch. 421, L. 1981; amd. Sec. 1, Ch. 171, L. 1989; amd. Sec. 3, Ch. 314, L. 2001; amd. Sec. 5, Ch. 75, L. 2005; amd. Sec. 2, Ch. 356, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 356 inserted definition of dependent; and made minor changes in style. Amendment effective January 1, 2008.

2-18-702. Group insurance for public employees and officers. (1) (a) Except as provided in subsection (1)(c), all counties, cities, towns, school districts, and the board of regents shall upon approval by two-thirds vote of their respective officers and employees enter into group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans for the benefit of their officers and employees and their dependents. The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents.

(b) The governing body of a county, city, or town may, at its discretion, consider the employees of private, nonprofit economic development organizations to be employees of the county, city, or town solely for the purpose of participation in group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans as provided in subsection (1)(a). The governing body of the county, city, or town may require an employee or organization to pay the actual cost of coverage required for participation or may, at its discretion and subject to any restriction on who may be a member of a group, pay all or part of the cost of coverage of the employee of the organization.

(c) The governing body of a third, fourth, fifth, sixth, or seventh class county or the board of trustees of a hospital district may, at its discretion, exempt employees of a county hospital, county rest home, or hospital district from participation in group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans provided pursuant to subsection (1)(a) or (1)(b).

(2) State employees and elected officials, as defined in 2-18-701, may participate in state employee group benefit plans as are provided for under part 8 of this chapter.

(3) For state officers and employees, the premiums required from time to time to maintain the insurance in force must be paid by the insured officers and employees, and the state treasurer shall deduct the premiums from the salary or wages of each officer or employee who elects to become insured, on the officer's or employee's written order, and issue a warrant for the premiums to the insurer.

(4) For the purpose of this section, the plans of health service corporations for defraying or assuming the cost of professional services of licentiates in the field of health or the services of hospitals, clinics, or sanitariums or both professional and hospital services must be construed as

group insurance and the dues payable under the plans must be construed as premiums for group insurance.

(5) If the board of trustees of a school district implements a self-insured group health plan or if the board of regents implements an alternative to conventional insurance to provide group benefits to its employees, the board shall maintain the alternative plan on an actuarially sound basis.

History: (1)En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967; amd. Sec. 1, Ch. 220, L. 1969; amd. Sec. 1, Ch. 382, L. 1971; amd. Sec. 1, Ch. 188, L. 1974; amd. Sec. 1, Ch. 359, L. 1975; amd. Sec. 1, Ch. 437, L. 1975; amd. Sec. 1, Ch. 259, L. 1977; amd. Sec. 11, Ch. 563, L. 1977; Sec. 11-1024, R.C.M. 1947; (2)En. Sec. 11, Ch. 555, L. 1979; (3), (4)En. Sec. 1, Ch. 248, L. 1963; Sec. 40-3905.1, R.C.M. 1947; R.C.M. 1947, 11-1024(1), 40-3905.1; amd. Sec. 31, Ch. 184, L. 1979; amd. Sec. 11, Ch. 555, L. 1979; amd. Sec. 7, Ch. 421, L. 1981; amd. Sec. 10, Ch. 660, L. 1989; amd. Sec. 1, Ch. 139, L. 1991; amd. Sec. 1, Ch. 13, L. 1993; amd. Sec. 3, Ch. 325, L. 1995; amd. Sec. 1, Ch. 186, L. 1999; amd. Sec. 2, Ch. 559, L. 2001.

2-18-703. Contributions. (1) Each agency, as defined in 2-18-601, and the state compensation insurance fund shall contribute the amount specified in this section toward the group benefits cost.

(2) For employees defined in 2-18-701 and for members of the legislature, the employer contribution for group benefits is \$557 a month from January 2007 through December 2007, \$590 a month from January 2008 through December 2008, and \$626 for January 2009 and for each succeeding month. For employees of the Montana university system, the employer contribution for group benefits is \$557 a month from July 2006 through June 2007, \$590 a month from July 2007 through June 2008, and \$626 for July 2008 and for each succeeding month. If a state employee is terminated to achieve a reduction in force, the continuation of contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than \$10 a month. Subject to the public hearing requirement provided in 2-9-212(2)(b), the increase in a local government's property tax levy for premium contributions for group benefits beyond the amount of contributions in effect on the first day of the last fiscal year is not subject to the mill levy calculation limitation provided for in 15-10-420.

(4) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of administration and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

(5) Unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member or to increase the reserves of the group.

(6) The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents.

History: En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967; amd. Sec. 1, Ch. 220, L. 1969; amd. Sec. 1, Ch. 382, L. 1971; amd. Sec. 1, Ch. 188, L. 1974; amd. Sec. 1, Ch. 359, L. 1975; amd. Sec. 1, Ch. 437, L. 1975; amd. Sec. 1, Ch. 259, L. 1977; amd. Sec. 11, Ch. 563, L. 1977; R.C.M. 1947, 11-1024(2); amd. Sec. 13, Ch. 678, L. 1979; amd. Sec. 8, Ch. 421, L. 1981; amd. Sec. 1, Ch. 207, L. 1983; amd. Sec. 11, Ch. 710, L. 1983; amd. Sec. 8, Ch. 740, L. 1985; amd. Sec. 2, Ch. 370, L. 1987; amd. Sec. 10, Ch. 661, L. 1987; amd. Sec. 2, Ch. 171, L. 1989; amd. Sec. 11, Ch. 660, L. 1989; amd. Sec. 1, Ch. 171, L. 1991; amd. Sec. 10, Ch. 720, L. 1991; amd. Sec. 3, Ch. 758, L. 1991; amd. Sec. 2, Ch. 13, L. 1993; amd. Sec. 9, Ch. 640, L. 1993; amd. Sec. 12, Ch. 455, L. 1995; amd. Sec. 10, Ch. 417, L. 1997; amd. Sec. 9, Ch. 558, L. 1999; amd. Sec. 4, Ch. 314, L. 2001; amd. Sec. 2, Ch. 511, L. 2001; amd. Secs. 6, 9, Ch. 553, L. 2001; amd. Secs. 2, 4, Ch. 529, L. 2003; amd. Sec. 6, Ch. 552, L. 2003; amd. Sec. 5, Ch. 6, L. 2005; amd. Sec. 13, Ch. 81, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 81 in (2) in first sentence near beginning after “group benefits is” deleted “\$460 a month for the period from July 2005 through December 2005, \$506 a month for the period from January 2006 through December 2006, and” and after “January 2007” inserted reference to amount through December 2007 and other amounts through December 2008 and for January 2009 and in second sentence after “group benefits is” deleted “\$506 a month for the period from July 2005 through June 2006 and” and after “July 2006” inserted language referencing amounts through June 2008 and amount for July 2008; and made minor changes in style. Amendment effective July 1, 2007.

2-18-704. Mandatory provisions. (1) An insurance contract or plan issued under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions of a defined benefit plan provided by law or, in the case of the defined contribution plan provided in Title 19, chapter 3, part 21, a member with at least 5 years of service and who is at least age 50 while in covered employment to remain a member of the group until the member becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless the member is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless the member is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) An insurance contract or plan issued under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section, notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

(3) (a) A state insurance contract or plan must contain provisions that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, if the legislator:

(i) terminates service in the legislature and is a vested member of a state retirement system provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of the legislator's legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3)(a) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3)(a) and subsequently terminates membership may not rejoin the group plan unless the person again serves as a legislator.

(4) (a) A state insurance contract or plan must contain provisions that permit continued membership in the state's group plan by a member of the judges' retirement system who leaves judicial office but continues to be an inactive vested member of the judges' retirement system as provided by 19-5-301. The judge shall notify the department of administration in writing within

90 days of the end of the judge's judicial service of the judge's choice to continue membership in the group plan.

(b) A former judge may not remain a member of the group plan under the provisions of this subsection (4) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost;

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost; or

(iii) becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended.

(c) A judge who remains a member of the group under the provisions of this subsection (4) and subsequently terminates membership may not rejoin the group plan unless the person again serves in a position covered by the state's group plan.

(5) A person electing to remain a member of the group under subsection (1), (2), (3), or (4) shall pay the full premium for coverage and for that of the person's covered dependents.

(6) An insurance contract or plan issued under this part that provides for the dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

(a) must permit any member of a group to obtain prescription drugs from a pharmacy located in Montana that is willing to match the price charged to the group or plan and to meet all terms and conditions, including the same professional requirements that are met by the mail service pharmacy for a drug, without financial penalty to the member; and

(b) may only be with an out-of-state mail service pharmacy that is registered with the board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation.

(7) An insurance contract or plan issued under this part must include coverage for treatment of inborn errors of metabolism, as provided for in 33-22-131.

(8) An insurance contract or plan issued under this part must include substantially equivalent or greater coverage for outpatient self-management training and education for the treatment of diabetes and certain diabetic equipment and supplies as provided in 33-22-129.

(9) (a) An insurance contract or plan issued under this part that provides coverage for an individual in a member's family must provide coverage for well-child care for children from the moment of birth through 7 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the contract or plan.

(b) Coverage for well-child care under subsection (9)(a) must include:

(i) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(ii) routine immunizations according to the schedule for immunization recommended by the immunization practice advisory committee of the U.S. department of health and human services.

(c) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit as provided for in this subsection (9).

(d) For purposes of this subsection (9):

(i) "developmental assessment" and "anticipatory guidance" mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics; and

(ii) "well-child care" means the services described in subsection (9)(b) and delivered by a physician or a health care professional supervised by a physician.

(10) (a) Except as provided in subsection (10)(b), upon renewal, an insurance contract or plan issued under this part under which coverage of a dependent terminates at a specified age must, as provided in 33-22-152, continue to provide coverage for any unmarried dependent, as defined in 33-22-140(5)(b), until the dependent reaches 25 years of age or marries, whichever occurs first. For insurance contracts or plans issued under this part, the premium charged for the additional coverage of a dependent, as defined in 33-22-140(5)(b), may be required to be paid by the insured and not by the employer.

(b) An insurance contract or plan issued under this part for the state employee group insurance program and the university system group insurance program is not subject to subsection (10)(a).

(11) Prior to issuance of an insurance contract or plan under this part, written informational materials describing the contract's or plan's cancer screening coverages must be provided to a prospective group or plan member.

History: En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967; amd. Sec. 1, Ch. 220, L. 1969; amd. Sec. 1, Ch. 382, L. 1971; amd. Sec. 1, Ch. 188, L. 1974; amd. Sec. 1, Ch. 359, L. 1975; amd. Sec. 1, Ch. 437, L. 1975; amd. Sec. 1, Ch. 259, L. 1977; amd. Sec. 11, Ch. 563, L. 1977; R.C.M. 1947, 11-1024(3), (4); amd. Sec. 1, Ch. 181, L. 1983; amd. Sec. 1, Ch. 738, L. 1991; amd. Sec. 1, Ch. 300, L. 1993; amd. Sec. 1, Ch. 274, L. 1995; amd. Sec. 14, Ch. 42, L. 1997; amd. Sec. 1, Ch. 282, L. 1997; amd. Sec. 1, Ch. 434, L. 1999; amd. Sec. 2, Ch. 471, L. 1999; amd. Sec. 2, Ch. 450, L. 2001; amd. Sec. 3, Ch. 356, L. 2007; amd. Sec. 1, Ch. 390, L. 2007; amd. Sec. 1, Ch. 463, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 356 inserted (10) requiring certain insurance coverage to continue until dependent insured is 25 years old or marries. Amendment effective January 1, 2008.

Chapter 390 inserted (9) requiring coverage for well-child care; and made minor changes in style. Amendment effective January 1, 2008.

Chapter 463 inserted (11) requiring written informational materials to be provided. Amendment effective January 1, 2008.

Applicability: Section 8, Ch. 390, L. 2007, provided: "[This act] applies to policies, certificates, evidence of coverage, and plans issued or renewed on or after January 1, 2008."

2-18-705 through 2-18-710 reserved.

2-18-711. Cooperative purchasing of employee benefit services and insurance products — procedures. (1) To provide employee group benefits, an agency, as defined in 2-18-601, and the state compensation insurance fund may participate with other agencies, nonprofit organizations, or business entities and in voluntary disability insurance purchasing pools provided for under 33-22-1815 if the agency or the state fund determines that cooperative purchasing is in the agency's or the state fund's best interest.

(2) Cooperative purchases under this section may be conducted according to purchasing procedures developed by the participating parties if, for contracts valued at \$20,000 a year or more, purchasing procedures, at a minimum, include:

(a) public notice in three major Montana newspapers of requirements for submitting bids or offers; and

(b) consideration of all submitted bids or offers.

(3) For purposes of this section, "employee" also means a schoolteacher.

History: En. Sec. 1, Ch. 147, L. 1997; amd. Sec. 5, Ch. 314, L. 2001.

Part 13 **Voluntary Employees' Beneficiary Association Act**

2-18-1311. Contributions of unused sick leave — other contributions not prohibited. (1) In a manner prescribed by the department, a contracting employer shall provide for a plan member to annually designate how many hours, if any, of the member's sick leave will be automatically converted to an employer contribution to the member's account each pay period as provided for in this section.

(2) (a) Except as provided in subsection (2)(b), a member may annually convert only the sick leave hours in excess of 240 hours and no more than the maximum prescribed by the contracting employer.

(b) When the member's employment is terminated, the member's unused sick leave balance may be converted, in whole or in part, to an employer contribution to the member's account pursuant to this section. For those amounts of sick leave not converted to employer contributions, the balance is allocated as required under 2-18-618(6).

(3) The amount of the employer contribution to a member's account for hours converted under this section must be equal to one-fourth of the pay attributed to the accumulated sick leave. The attributable pay must be computed on the basis of the employee's salary or wage at the time that the sick leave is converted. A member may not later receive as sick leave credit or as a lump-sum payment amounts contributed to the member's account pursuant to this section.

(4) This section does not prohibit an employer from entering into an agreement with a member for employer contributions to a member account in addition to the contributions provided for under this section.

History: En. Sec. 8, Ch. 272, L. 2001; amd. Sec. 3, Ch. 503, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 503 in (2)(b) in first sentence near middle after the second "member's" deleted "entire", after "balance" substituted "may" for "must", before "converted" deleted "automatically", after "converted" inserted "in whole or in part", and after "section" deleted "and may not be paid as a lump sum" and at beginning of second sentence inserted "For those amounts of sick leave not converted to employer contributions, the balance is allocated as required"; and made minor changes in style. Amendment effective July 1, 2007.

TITLE 7

LOCAL GOVERNMENT

CHAPTER 1

GENERAL PROVISIONS

Part 21

Counties

7-1-2121. Publication and content of notice — proof of publication. Unless otherwise specifically provided, whenever a local government unit other than a municipality is required to give notice by publication, the following applies:

(1) Publication must be in a newspaper meeting the qualifications of subsections (2) and (3), except that in a county where a newspaper does not meet these qualifications, publication must be made in a qualified newspaper in an adjacent county. If there is no qualified newspaper in an adjacent county, publication must be made by posting the notice in three public places in the county, designated by resolution of the governing body.

(2) (a) The newspaper must:

- (i) be of general circulation;
- (ii) be published at least once a week;
- (iii) be published in the county where the hearing or other action will take place; and
- (iv) have, prior to July 1 of each year, submitted to the clerk and recorder a sworn statement

that includes:

- (A) circulation for the prior 12 months;
- (B) a statement of net distribution;
- (C) itemization of the circulation that is paid and that is free; and
- (D) the method of distribution.

(b) A newspaper of general circulation does not include a newsletter or other document produced or published by the local government unit.

(3) In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.

(4) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

(5) The notice must be published twice, with at least 6 days separating each publication.

(6) The published notice must contain:

- (a) the date, time, and place of the hearing or other action;
- (b) a brief statement of the action to be taken;
- (c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice by publication.

(7) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.

(8) Proof of the publication or posting of any notice may be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the person posting the notice.

History: En. Sec. 1, Ch. 349, L. 1985; amd. Sec. 1, Ch. 354, L. 2001; amd. Sec. 1, Ch. 444, L. 2005; amd. Sec. 1, Ch. 439, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 439 inserted (2)(a)(iv) requiring a sworn statement containing certain elements; and made minor changes in style. Amendment effective October 1, 2007.

7-1-2122. Mail notice. (1) Unless otherwise specifically provided, whenever a local government unit other than a municipality is required to give notice of a hearing or other official act by mail, the requirement may be met by:

(a) deposit of the notice, properly addressed, in the United States mail with postage paid at the first-class rate;

(b) sending the notice by certified mail rather than first class; or

(c) mailing the notice at the bulk rate instead of first class if notice is to be given by mail to all electors or residents of the affected local government unit.

(2) The notice shall contain:

(a) the date, time, and place of the hearing or other action;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring mail notice.

(3) When notice by mail is required, the requirement applies only to persons whose addresses are known.

History: En. Sec. 2, Ch. 349, L. 1985.

CHAPTER 4 OFFICERS AND EMPLOYEES

Part 1 General Provisions

7-4-101. Filing of oath of office. Every oath of office, certified by the officer before whom the same was taken, must be filed within the time required by law, except when otherwise specially provided, as follows:

(1) in the office of the secretary of state for all officers whose authority is not limited to any particular county;

(2) in the office of the clerk of the respective county for all elected or appointed officers for any county, all officers whose duties are local or whose residence in any particular county is prescribed by law, and the clerks of the district courts.

History: En. Sec. 1014, Pol. C. 1895; re-en. Sec. 366, Rev. C. 1907; re-en. Sec. 434, R.C.M. 1921; Cal. Pol. C. Sec. 909; re-en. Sec. 434, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1949; R.C.M. 1947, 59-417(part).

7-4-102. Office hours. (1) Unless otherwise provided by law, each officer shall keep the officer's office open for the transaction of business during the office hours determined by the governing body by resolution after a public hearing and only if consented to by any affected elected county officer each day except Saturdays and legal holidays.

(2) County and city treasurers may, in the interest of the safekeeping of funds, securities, and records under their control, close their offices during the period from noon to 1 p.m. every day.

(3) The governing body of a third-class city or town may establish days and times when municipal offices are open to conduct business.

History: En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R.C.M. 1921; Cal. Pol. C. Sec. 1030; amd. Sec. 1, Ch. 5, L. 1931; re-en. Sec. 453, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1951; amd. Sec. 1, Ch. 253, L. 1957; amd. Sec. 1, Ch. 2, L. 1961; amd. Sec. 1, Ch. 33, L. 1961; R.C.M. 1947, 59-510(2)(part); amd. Sec. 1, Ch. 2, Sp. L. June 1989; amd. Sec. 2, Ch. 216, L. 1995.

Part 22

County Officers in General

7-4-2201. General qualifications for county office. A person is not eligible for a county office who at the time of election is not:

- (1) of the voting age required by the Montana constitution;
- (2) a citizen of the state; and
- (3) (a) an elector of the county in which the duties of the office are to be exercised; or
(b) in the case of an office consolidated between two or more counties, an elector in one of the counties in which the duties of the office are to be exercised.

History: En. Sec. 4310, Pol. C. 1895; re-en. Sec. 2955, Rev. C. 1907; re-en. Sec. 4723, R.C.M. 1921; Cal. Pol. C. Sec. 4101; re-en. Sec. 4723, R.C.M. 1935; amd. Sec. 1, Ch. 423, L. 1971; R.C.M. 1947, 16-2401; amd. Sec. 1, Ch. 60, L. 1999.

7-4-2202. General qualifications for district or township offices. A person is not eligible to a district or township office unless the person is:

- (1) of voting age as required by the Montana constitution;
- (2) a citizen of the state; and
- (3) an elector of the district or township in which the duties of the office are to be exercised or for which the person is elected.

History: En. Sec. 4311, Pol. C. 1895; re-en. Sec. 2956, Rev. C. 1907; re-en. Sec. 4724, R.C.M. 1921; Cal. Pol. C. Sec. 4102; re-en. Sec. 4724, R.C.M. 1935; amd. Sec. 2, Ch. 423, L. 1971; R.C.M. 1947, 16-2402; amd. Sec. 406, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

7-4-2203. County officers. (1) There may be elected or appointed the following county officers, who shall possess the qualifications for suffrage prescribed by the Montana constitution and other qualifications as may be prescribed by law:

- (a) one county attorney;
- (b) one clerk of the district court;
- (c) one county clerk;
- (d) one sheriff;
- (e) one treasurer;
- (f) one auditor if authorized by 7-6-2401;
- (g) one county superintendent of schools;
- (h) one county surveyor;
- (i) one assessor;
- (j) one coroner;
- (k) one public administrator; and
- (l) at least one justice of the peace.

(2) The commissioners may appoint at their discretion constables. More than one constable may be appointed for each justice's court.

(3) All elective township officers may be elected at each general election as now provided by law.

History: En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R.C.M. 1921; Cal. Pol. C. Sec. 4109; re-en. Sec. 4728, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975; R.C.M. 1947, 16-2406(part); amd. Sec. 1, Ch. 443, L. 1979; amd. Sec. 1, Ch. 228, L. 1989.

7-4-2204. Township officers. The officers of townships are as provided elsewhere in this code or by the board of county commissioners.

History: En. Sec. 4313, Pol. C. 1895; re-en. Sec. 2958, Rev. C. 1907; re-en. Sec. 4726, R.C.M. 1921; Cal. Pol. C. Sec. 4104; re-en. Sec. 4726, R.C.M. 1935; amd. Sec. 10, Ch. 491, L. 1973; amd. Sec. 2, Ch. 253, L. 1975; R.C.M. 1947, 16-2404.

7-4-2205. Term of office — oath. (1) Each person elected to an office named in 7-4-2203 holds the office for the term of 4 years and until a successor is elected and qualified.

(2) A person appointed to any of the different offices serves at the pleasure of the commissioners.

(3) Each officer who is mentioned in this part and who is elected to office shall:

(a) take the oath of office on or before the last business day of December following the officer's election; and

(b) take office at 12:01 a.m. on January 1 following the officer's election.

History: En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R.C.M. 1921; Cal. Pol. C. Sec. 4109; re-en. Sec. 4728, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975; R.C.M. 1947, 16-2406(part); amd. Sec. 1, Ch. 71, L. 1983; amd. Sec. 2, Ch. 421, L. 1997; amd. Sec. 2, Ch. 131, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 131 in (3)(a) near middle after "office on" inserted "or before". Amendment effective October 1, 2007.

7-4-2206. Vacancies. (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

(2) Vacancies in all county offices, except that of county commissioner, must be filled by appointment by the board of county commissioners. Except as provided in subsections (3) through (5), the appointee holds the office, if elective, until the person elected at the next general election is certified pursuant to 13-15-406. If the office is not elective, the appointee serves at the pleasure of the commissioners.

(3) Whenever a vacancy occurs 75 days or more before the general election held during the second year of the term, an individual must be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 75 days or more before the primary election during the second year of the term, the same procedure must be used as is used to elect a person to that office for a full 4-year term.

(b) Whenever the vacancy occurs after the 75th day before the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the clerk and recorder of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate must be filed with the clerk and recorder on or before the 75th day before the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

(4) Whenever a vacancy occurs after the 75th day before the general election held during the second year of the term, the person appointed by the commissioners under subsection (2) shall serve until the end of the term.

(5) Vacancies occurring in the office of justice of the peace must be filled as provided in Title 3, chapter 10, part 2.

History: En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R.C.M. 1921; Cal. Pol. C. Sec. 4109; re-en. Sec. 4728, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975; R.C.M. 1947, 16-2406(part); amd. Sec. 3, Ch. 526, L. 1979; amd. Sec. 15, Ch. 250, L. 1985; amd. Sec. 33, Ch. 42, L. 1997; amd. Sec. 1, Ch. 226, L. 1997.

7-4-2207. Duty of officers to complete official business. It is the duty of all officers to complete the business of their respective offices prior to the time of the expiration of their respective terms. If any officer, at the close of the term, leaves to the officer's successor official labor to be performed for which the officer has received compensation or that it was the officer's duty to perform, the officer is liable to pay to the successor the full value of the services, which may be recovered in any court of competent jurisdiction upon action brought against the officer on the officer's official bond.

History: En. Sec. 4623, Pol. C. 1895; re-en. Sec. 3156, Rev. C. 1907; re-en. Sec. 4905, R.C.M. 1921; re-en. Sec. 4905, R.C.M. 1935; R.C.M. 1947, 25-221; amd. Sec. 407, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

7-4-2208. Absence of county officers from state. (1) Subject to subsection (2) and except as provided in 10-1-1008, if a county officer is absent from the state for a period of more than 60 days or for a period longer than 15 days without the consent of the board of county commissioners, the officer forfeits the office.

(2) The sheriff, undersheriff, or deputy sheriffs of any county may absent themselves from the state, with the permission of the board, for a period of more than 60 days for the sole purpose

of attending a recognized and accredited law enforcement training school without effecting forfeiture of their offices.

History: En. Sec. 4326, Pol. C. 1895; re-en. Sec. 2971, Rev. C. 1907; re-en. Sec. 4739, R.C.M. 1921; Cal. Pol. C. Sec. 4120; re-en. Sec. 4739, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1947; R.C.M. 1947, 16-2417; amd. Sec. 1, Ch. 232, L. 1991; amd. Sec. 21, Ch. 381, L. 2005.

7-4-2209. Authority to administer oaths. Every officer mentioned in 7-4-2203(1) may administer and certify oaths.

History: En. Sec. 4325, Pol. C. 1895; re-en. Sec. 2970, Rev. C. 1907; re-en. Sec. 4738, R.C.M. 1921; Cal. Pol. C. Sec. 4118; re-en. Sec. 4738, R.C.M. 1935; R.C.M. 1947, 16-2416; amd. Sec. 2, Ch. 443, L. 1979.

7-4-2210. Restriction on practice of law by certain officers. (1) Sheriffs, clerks, constables, and their deputies are prohibited from practicing law or acting as attorneys or counselors at law or having as a partner a lawyer or one who acts as a lawyer.

(2) A county clerk, clerk of any court, or sheriff may not act as an agent or solicitor in the prosecution of any claim or application for lands, pensions, patent rights, or other proceedings before any department of the state or general government or courts of the United States during the person's continuance in office.

History: (1)En. Sec. 4327, Pol. C. 1895; re-en. Sec. 2972, Rev. C. 1907; re-en. Sec. 4740, R.C.M. 1921; Cal. Pol. C. Sec. 4121; re-en. Sec. 4740, R.C.M. 1935; Sec. 16-2418, R.C.M. 1947; (2)En. Secs. 454, 455, p. 134, Bannack Stat.; re-en. Secs. 611, 612, p. 159, Cod. Stat. 1871; re-en. Secs. 531, 532, p. 179, L. 1877; re-en. Secs. 531, 532, 1st Div. Rev. Stat. 1879; re-en. Secs. 548, 549, 1st Div. Comp. Stat. 1887; re-en. Sec. 181, C. Civ. Proc. 1895; re-en. Sec. 6316, Rev. C. 1907; re-en. Sec. 8869, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 171; re-en. Sec. 8869, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1963; Sec. 93-902, R.C.M. 1947; R.C.M. 1947, 16-2418, 93-902(part); amd. Sec. 408, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

7-4-2211. County offices. (1) All county officers, except justices of the peace as set forth in 3-10-101, must keep their offices at the county seat.

(2) (a) The sheriff, the county clerk, the clerk of the district court, the treasurer, the county attorney, the county auditor in counties in which that officer is maintained, and the county assessor shall keep their offices open for the transaction of business during the office hours determined by the governing body by resolution after a public hearing and only if consented to by any affected elected county officer, every day in the year except legal holidays and Saturdays.

(b) This subsection (2) does not apply to counties operating under the county manager plan.

History: (1)En. Sec. 4322, Pol. C. 1895; re-en. Sec. 2967, Rev. C. 1907; re-en. Sec. 4735, R.C.M. 1921; Cal. Pol. C. Sec. 4116; re-en. Sec. 4735, R.C.M. 1935; amd. Sec. 2, Ch. 276, L. 1974; Sec. 16-2413, R.C.M. 1947; (2)En. Sec. 4323, Pol. C. 1895; re-en. Sec. 2968, Rev. C. 1907; re-en. Sec. 4736, R.C.M. 1921; Cal. Pol. C. Sec. 4116; re-en. Sec. 4736, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1949; amd. Sec. 1, Ch. 199, L. 1957; Sec. 16-2414, R.C.M. 1947; R.C.M. 1947, 16-2413, 16-2414(part); amd. Sec. 3, Ch. 216, L. 1995.

7-4-2212. Official bonds of county officers. (1) The bonds of county officers are fixed by Title 2, chapter 9, part 7.

(2) Except in criminal prosecutions, whenever any special penalty, forfeiture, or liability is imposed on any officer for nonperformance or malperformance of official duty, the liability therefor attaches to the official bond of such officer and to the principal and sureties thereon.

History: (1)New section recommended by Code Commissioner, 1921; re-en. Sec. 4743, R.C.M. 1935; Sec. 16-2421, R.C.M. 1947; (2)En. Sec. 4324, Pol. C. 1895; re-en. Sec. 2969, Rev. C. 1907; re-en. Sec. 4737, R.C.M. 1921; Cal. Pol. C. Sec. 4117; re-en. Sec. 4737, R.C.M. 1935; Sec. 16-2415, R.C.M. 1947; R.C.M. 1947, 16-2415, 16-2421.

7-4-2213. Inspection of official bonds. (1) At a regular meeting of the board of county commissioners in March and September of each year, the board of county commissioners shall carefully examine all official bonds of all county and township officials then in force and effect and investigate the qualifications and financial condition and liability of all sureties on the bonds and their sufficiency.

(2) If it appears to the satisfaction of the board or a majority of the members of the board that any surety upon any bond has, since the approval and acceptance of the bond, died or withdrawn, left the state, disposed of all of the surety's property in this state, or become mentally ill, insolvent, financially embarrassed, or not good and responsible for the amount of the liability on the bond, the board shall immediately cause the clerk of the board to notify in writing the

judge of the district court of that district of its action and conclusion and all facts in connection with and the reasons for the action.

(3) The judge shall take notice of and investigate the matter and take steps, by order to show cause or other order, citation, step, or action, as may be necessary to make the bond good and sufficient according to the requirements of law and ample security for the amount of the bond.

History: En. Sec. 1, p. 92, L. 1901; re-en. Sec. 2978, Rev. C. 1907; re-en. Sec. 4744, R.C.M. 1921; re-en. Sec. 4744, R.C.M. 1935; R.C.M. 1947, 16-2422; amd. Sec. 3, Ch. 443, L. 1979; amd. Sec. 409, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

7-4-2214 through 7-4-2220 reserved.

7-4-2221. Manner of keeping records and storing documents. Whenever any officer of any county is required or authorized by law to record, copy, file, recopy, or replace any document, plat, paper, written instrument, or book on file or of record in the officer's office, the officer may do so by photographic, micrographic, electronic, or other mechanical process that produces a clear, accurate, and permanent copy or reproduction of the original document, plat, paper, written instrument, or record in accordance with standards not less than those now approved for permanent records by national standards.

History: (1)En. Sec. 1, Ch. 117, L. 1959; Sec. 16-2428, R.C.M. 1947; (2)En. Sec. 4411, Pol. C. 1895; re-en. Sec. 3032, Rev. C. 1907; amd. Sec. 1, Ch. 68, L. 1917; re-en. Sec. 4796, R.C.M. 1921; Cal. Pol. C. Sec. 4235; re-en. Sec. 4796, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1945; amd. Sec. 1, Ch. 218, L. 1971; amd. Sec. 1, Ch. 199, L. 1975; amd. Sec. 19, Ch. 293, L. 1975; Sec. 16-2902, R.C.M. 1947; R.C.M. 1947, 16-2428, 16-2902(part); amd. Sec. 7, Ch. 420, L. 1993.

7-4-2222. Substitution of reproduction for original document. (1) Any document, plat, paper, written instrument, or book reproduced as provided in 7-4-2221 can be disposed of or destroyed only upon order of the district or probate court having jurisdiction, and the reproductions may be substituted as public records.

(2) The copy of any record destroyed or disposed of as authorized in this section or a certified copy thereof is admissible as evidence in any court or proceeding and has the same force and effect as though the original record had been produced and proved.

(3) It is the duty of the custodian of the records to prepare enlarged typed or photographic copies of the records whenever their production is required by law.

History: (1)En. Sec. 2, Ch. 117, L. 1959; Sec. 16-2429, R.C.M. 1947; (2), (3)En. Sec. 3, Ch. 117, L. 1959; Sec. 16-2430, R.C.M. 1947; R.C.M. 1947, 16-2429, 16-2430; amd. Sec. 8, Ch. 420, L. 1993.

7-4-2223. Duplicate records — safe storage of one copy. (1) Whenever any record or document is copied or reproduced as provided in 7-4-2221, it must be made in duplicate.

(2) The custodian of the record or document shall place the master copy, the contents of the copy being first identified and indexed, in a fireproof vault or fireproof storage place. The custodian shall retain the other copy in the office with suitable equipment for reproducing the record or document for persons entitled to the record or document.

History: En. Sec. 4, Ch. 117, L. 1959; R.C.M. 1947, 16-2431; amd. Sec. 9, Ch. 420, L. 1993.

Part 24 Deputy Officers in General

7-4-2401. Deputy officers. (1) Each county and township officer, except a justice of the peace and the county assessor, may appoint as many deputies or assistants as may be necessary for the faithful and prompt discharge of the duties of the office. All compensation or salary of any deputy or assistant must be as provided in this code.

(2) The appointment of deputies, clerks, and subordinate officers of counties, districts, and townships must be made in writing and filed in the office of the county clerk and recorder.

History: (1)En. Sec. 4318, Pol. C. 1895; re-en. Sec. 2963, Rev. C. 1907; re-en. Sec. 4731, R.C.M. 1921; Cal. Pol. C. Sec. 4112; re-en. Sec. 4731, R.C.M. 1935; amd. Sec. 2, Ch. 309, L. 1973; Sec. 16-2409, R.C.M. 1947; (2)En. Sec. 4319, Pol. C. 1895; re-en. Sec. 2964, Rev. C. 1907; re-en. Sec. 4732, R.C.M. 1921; Cal. Pol. C. Sec. 4113; re-en. Sec. 4732, R.C.M. 1935; Sec. 16-2410, R.C.M. 1947; R.C.M. 1947, 16-2409, 16-2410; amd. Sec. 7, Ch. 27, Sp. L. November 1993.

7-4-2402. Authorization to exceed limitation on number of deputy officers. The board of county commissioners in each county is hereby authorized to fix and determine the number of county deputy officers and to allow the several county officers to appoint a greater number of deputies than the maximum number allowed by law when, in the judgment of the board, such greater number of deputies is needed for the faithful and prompt discharge of the duties of any county office.

History: Ap. p. Sec. 1, Ch. 178, L. 1907; re-en. Sec. 3123, Rev. C. 1907; re-en. Sec. 4878, R.C.M. 1921; re-en. Sec. 4878, R.C.M. 1935; Sec. 16-3704, R.C.M. 1947; Ap. p. Sec. 2, Ch. 222, L. 1919; amd. Sec. 1, Ch. 204, L. 1921; re-en. Sec. 4874, R.C.M. 1921; amd. Sec. 1, Ch. 82, L. 1923; re-en. Sec. 4874, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1943; amd. Sec. 1, Ch. 151, L. 1945; amd. Sec. 1, Ch. 47, L. 1947; amd. Sec. 1, Ch. 136, L. 1951; amd. Sec. 1, Ch. 365, L. 1971; Sec. 25-604, R.C.M. 1947; R.C.M. 1947, 16-3704(part), 25-604(part).

7-4-2403. Official mention of principal officer includes deputies. Whenever the official name of any principal officer is used in any law conferring power or imposing duties or liabilities, it includes the officer's deputies.

History: En. Sec. 4320, Pol. C. 1895; re-en. Sec. 2965, Rev. C. 1907; re-en. Sec. 4733, R.C.M. 1921; Cal. Pol. C. Sec. 4114; re-en. Sec. 4733, R.C.M. 1935; R.C.M. 1947, 16-2411; amd. Sec. 412, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

7-4-2404. Limitation on county officer acting as deputy officer. No county officer under salary must be appointed or act as deputy of another officer of the same county except in cases where the officer so appointed agrees to act and serve as such deputy without additional compensation.

History: En. Sec. 962, Pol. C. 1895; re-en. Sec. 344, Rev. C. 1907; re-en. Sec. 412, R.C.M. 1921; Cal. Pol. C. Sec. 843; amd. Sec. 1, Ch. 21, L. 1925; re-en. Sec. 412, R.C.M. 1935; R.C.M. 1947, 59-303.

7-4-2405. Appointment of deputies in certain counties of seventh class. (1) In any county of the seventh class having less than 2,000 population, there shall not be appointed any deputy county officer or deputy designated by any county officer of such county unless the appointment of such deputy, designating the term of service and compensation thereof, shall be first authorized by the board of county commissioners of such county.

(2) The board shall not approve any compensation in payment for services of any person appointed by or acting under any elected or appointed officer of said county whose appointment, as herein provided, shall not have been authorized and approved by the board of such county.

History: (1)En. Sec. 1, Ch. 168, L. 1941; Sec. 16-3707, R.C.M. 1947; (2)En. Sec. 2, Ch. 168, L. 1941; Sec. 16-3708, R.C.M. 1947; R.C.M. 1947, 16-3707, 16-3708.

Part 30 County Offices

7-4-3005. Office of county superintendent of schools. The duties and functions of the office of county superintendent of schools are provided for in Title 20.

History: En. by Code Commissioner, 1979.

CHAPTER 5 GENERAL OPERATION AND CONDUCT OF BUSINESS

Part 21 Conduct of County Government

7-5-2146. Membership in associations of county school superintendents — payment of expenses. (1) The county superintendents of schools of the counties of Montana may obtain county membership in and cooperate with associations and organizations of county school superintendents of the state and of other states for the benefit of good government and the protection of county interests.

(2) County school superintendents of the counties of the state are entitled to expenses as provided for state officials in 2-18-501 through 2-18-503 for attendance at any general meeting of the Montana association of county school superintendents held within the state, and the

proportionate expenses and charges against each county as a member of such an association must be paid by the county.

History: En. Sec. 1, Ch. 46, L. 1989.

CHAPTER 6 FINANCIAL ADMINISTRATION AND TAXATION

Part 2 Deposit and Investment of Public Money

7-6-201. Deposit of public funds in financial institutions. (1) Except as provided in 7-6-202, 7-6-206, or 7-6-2701, it shall be the duty of all county and city treasurers and town clerks to deposit all public money in their possession and under their control in any solvent banks, building and loan associations, savings and loan associations, or credit unions located in the county, city, or town of which such treasurer is an officer, subject to national supervision or state examination as the local governing body may designate, and no other.

(2) Said local governing body is hereby authorized to deposit such public money not necessary for immediate use by such county, city, or town in a savings or time deposit with any bank, building and loan association, savings and loan association, or credit union authorized above or in a repurchase agreement as authorized in 7-6-213.

(3) The treasurer or town clerk shall take from such bank, building and loan association, savings and loan association, or credit union such security as the local governing body may prescribe, approve, and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits, together with the interest on any time or savings deposits.

(4) All such deposits shall be subject to withdrawal by the treasurer or town clerk in such amounts as may be necessary from time to time. No deposit of funds shall be made or permitted to remain in any bank, building and loan association, savings and loan association, or credit union until the security for such deposits shall have been first approved by the local governing body and delivered to the treasurer or town clerk.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304, L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); amd. Sec. 2, Ch. 329, L. 1981; amd. Sec. 1, Ch. 421, L. 1985; amd. Sec. 1, Ch. 90, L. 1989.

7-6-202. Investment of public money in direct obligations of United States. (1) A local governing body may invest public money not necessary for immediate use by the county, city, or town in the following eligible securities:

(a) United States government treasury bills, notes, and bonds and in United States treasury obligations, such as state and local government series (SLGS), separate trading of registered interest and principal of securities (STRIPS), or similar United States treasury obligations;

(b) United States treasury receipts in a form evidencing the holder's ownership of future interest or principal payments on specific United States treasury obligations that, in the absence of payment default by the United States, are held in a special custody account by an independent trust company in a certificate or book-entry form with the federal reserve bank of New York; or

(c) obligations of the following agencies of the United States, subject to the limitations in subsection (2):

- (i) federal home loan bank;
- (ii) federal national mortgage association;
- (iii) federal home mortgage corporation; and
- (iv) federal farm credit bank.

(2) An investment in an agency of the United States is authorized under this section if the investment is a general obligation of the agency and has a fixed or zero-coupon rate and does not

have prepayments that are based on underlying assets or collateral, including but not limited to residential or commercial mortgages, farm loans, multifamily housing loans, or student loans.

(3) The local governing body may invest in a United States government security money market fund if:

(a) the fund is sold and managed by a management-type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as may be amended;

(b) the fund consists only of eligible securities as described in this section;

(c) the use of repurchase agreements is limited to agreements that are fully collateralized by the eligible securities, as described in this section, and the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian;

(d) the fund is listed in a national financial publication under the category of “money market mutual funds”, showing the fund’s average maturity, yield, and asset size; and

(e) the fund’s average maturity does not exceed 397 days.

(4) Except as provided in subsection (5), an investment authorized in this part may not have a maturity date exceeding 5 years, except when the investment is used in an escrow account to refund an outstanding bond issue in advance.

(5) An investment of the assets of a local government group self-insurance program established pursuant to 2-9-211 or 39-71-2103 in an investment authorized in this part may not have a maturity date exceeding 10 years, and the average maturity of all those authorized investments of a local government group self-insurance program may not exceed 6 years.

(6) This section may not be construed to prevent the investment of public funds under the state unified investment program established in Title 17, chapter 6, part 2.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); amd. Sec. 1, Ch. 620, L. 1985; amd. Sec. 1, Ch. 201, L. 1989; amd. Sec. 1, Ch. 271, L. 1993; amd. Sec. 1, Ch. 406, L. 1995; amd. Sec. 1, Ch. 131, L. 1997.

7-6-203. Interest rates on deposits of public money. (1) The bank, building and loan association, savings and loan association, or credit union in which the money is deposited shall pay on the money no less than the rate of interest as is paid on money from private sources on the same terms.

(2) Refusal of any bank, building and loan association, savings and loan association, or credit union to pay said interest rate shall constitute a waiver of that institution’s right to participate in the deposit of public funds as set forth in this part.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); amd. Sec. 2, Ch. 421, L. 1985.

7-6-204. Crediting of interest — exceptions. (1) Interest paid and collected on deposits or investments must be credited to the general fund of the county, city, or town to whose credit the funds are deposited unless otherwise provided:

(a) by law;

(b) by terms of a gift, grant, or donation; or

(c) by subsections (2) and (3).

(2) Subject to subsection (1), interest paid and collected on the deposits or investments of the funds of a volunteer fire district or department organized in an unincorporated area under Title 7, chapter 33, part 21 or 23, or of a fire service area or county fire department must be credited to the account of that fire district, service area, or department.

(3) Subject to subsection (1), interest paid and collected on the deposits or investments of any fund separately created and accounted for by a county, city, or town may be credited to the

separately created fund proportionately to each fund's participation in the deposit or investment.

History: (1)En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); (2)En. Sec. 1, Ch. 486, L. 1979; amd. Sec. 28, Ch. 575, L. 1981; amd. Sec. 1, Ch. 130, L. 1993; amd. Sec. 44, Ch. 278, L. 2001; amd. Sec. 1, Ch. 214, L. 2003; amd. Sec. 4, Ch. 449, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 449 in (2) near middle after "23" inserted "or of a fire service area or county fire department" and after "district" inserted "service area"; and made minor changes in style. Amendment effective June 1, 2007.

7-6-205. Demand deposits. Demand deposits may be placed only in banks.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(4)(a); amd. Sec. 1, Ch. 229, L. 1997.

7-6-206. Time deposits — repurchase agreement. (1) Public money not necessary for immediate use by a county, city, or town that is not invested as authorized in 7-6-202 may be placed in time or savings deposits with a bank, savings and loan association, or credit union in the state or placed in repurchase agreements as authorized in 7-6-213. Money placed in repurchase agreements is subject to subsection (2).

(2) The local governing body may solicit bids for time or savings deposits from a bank, savings and loan association, or credit union in the state. The local governing body may deposit public money in the institutions unless a local financial institution agrees to pay the same rate of interest bid by a financial institution not located in the county, city, or town. The governing body may solicit bids by notice sent by mail to the investment institutions that have requested that their names be listed for bid notice with the department of administration.

(3) In addition to other investments authorized under 7-6-202 and this section, public money not necessary for immediate use by a county, city, or town may be invested in accordance with the following conditions:

(a) the money is initially invested through a federally insured financial institution in the state selected by the governing body;

(b) the selected in-state financial institution arranges for the deposit of the funds in certificates of deposit for the account of the county, city, or town in one or more federally insured financial institutions, regardless of location;

(c) the full amount of principal and accrued interest on each certificate of deposit is covered by federal deposit insurance;

(d) the selected in-state financial institution acts as the custodian for the county, city, or town with respect to the certificates of deposit issued for its account; and

(e) at the same time that the county, city, or town money is deposited and the certificates of deposit are issued, the selected in-state financial institution receives an amount of deposits from customers of other federally insured financial institutions, regardless of location, equal to or greater than the amount of money initially invested by the county, city, or town through the selected in-state financial institution.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(4)(b), (4)(c); amd. Sec. 8, Ch. 634, L. 1979; amd. Sec. 3, Ch. 329, L. 1981; amd. Sec. 3, Ch. 421, L. 1985; amd. Sec. 2, Ch. 90, L. 1989; amd. Sec. 2, Ch. 271, L. 1993; amd. Sec. 2, Ch. 406, L. 1995; amd. Sec. 1, Ch. 240, L. 2005.

7-6-207. Deposit security. (1) The local governing body may require security only for that portion of the deposits that is not guaranteed or insured according to law and, as to the unguaranteed or uninsured portion, to the extent of:

(a) 50% of the deposits if the institution in which the deposit is made has a net worth to total assets ratio of 6% or more; or

(b) 100% if the institution in which the deposit is made has a net worth to total assets ratio of less than 6%. The security must consist of those enumerated in 17-6-103 or cashier's checks issued to the depository institution by any federal reserve bank.

(2) When negotiable securities are furnished, the securities may be placed in trust. The trustee's receipt may be accepted in lieu of the actual securities when the receipt is in favor of the treasurer or town clerk and the treasurer's or clerk's successors. All warrants or other negotiable securities must be properly assigned or endorsed in blank. The appropriate governing body shall, upon the acceptance and approval of any of the bonds or securities, make a complete minute entry of the acceptance and approval upon the record of its proceedings, and the bonds and securities must be reapproved at least quarterly.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304, L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(2), (3); amd. Sec. 1, Ch. 158, L. 1979; amd. Sec. 2, Ch. 252, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 217, L. 1983; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 2, Ch. 620, L. 1985; amd. Sec. 472, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

7-6-208. Substitution of deposit security. (1) Any bank, building and loan association, savings and loan association, or credit union pledging securities as provided in 7-6-207, at any time it deems advisable or desirable, may substitute like securities for all or any part of the securities pledged. The collateral so substituted shall be approved by the governing body of the county, city, or town at its next official meeting.

(2) Such securities so substituted shall at the time of substitution be at least equal in principal amount to the securities for which substitution is made. In the event that the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward a receipt by registered or certified mail to the county, city, or town and to the depository bank, building and loan association, savings and loan association, or credit union. The receipt shall specifically describe and identify both the securities so substituted and those released and returned to the depository bank, building and loan association, savings and loan association, or credit union.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304, L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(7); amd. Sec. 4, Ch. 421, L. 1985.

7-6-209. Repealed. Sec. 2, Ch. 217, L. 1983.

History: En. Sec. 1, Ch. 44, L. 1931; re-en. Sec. 4767.3, R.C.M. 1935; amd. Sec. 70, Ch. 348, L. 1974; amd. Sec. 29, Ch. 213, L. 1975; R.C.M. 1947, 16-2621; amd. Sec. 7, Ch. 274, L. 1981.

7-6-210. Repealed. Sec. 13, Ch. 179, L. 1995.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304, L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983.

7-6-211. Report by financial institution. Any bank, building and loan association, savings and loan association, or credit union receiving such deposits shall, through its president and cashier or secretary, make a statement of account quarter-annually, under oath, showing:

- (1) all such money that has been deposited with such bank, building and loan association, savings and loan association, or credit union during the quarter;
- (2) the amount of daily balance in dollars;
- (3) the amount of interest credited or paid therefor by such bank, building and loan association, savings and loan association, or credit union; and
- (4) that neither such bank, building and loan association, savings and loan association, or credit union nor any officer thereof nor any person for it has paid or given any consideration or emolument whatsoever to the treasurer or town clerk or to any other person, other than the interest provided for herein, for or on account of the making of such deposits with any such bank, building and loan association, savings and loan association, or credit union.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); amd. Sec. 5, Ch. 421, L. 1985.

7-6-212. Limitation on liability of treasurer or town clerk. When money has been deposited in accordance with the provisions of this part, the treasurer or town clerk is not liable for loss on account of any deposit that may occur through damage by the elements or for any other cause or reason occasioned through means other than the treasurer's or clerk's own neglect, fraud, or dishonorable conduct.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); amd. Sec. 473, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

7-6-213. Repurchase agreements — bidding. (1) After qualifying as provided in subsection (5), a financial institution may contract with a local governing body to establish one or more repurchase agreements, including daily repurchase agreements.

(2) A repurchase agreement is a contract that specifies the minimum and maximum of public money that the local governing body will invest under the contract in securities that the financial institution will sell to the local governing body and that the financial institution will repurchase on mutually agreeable terms.

(3) A repurchase agreement is not a demand account.

(4) The local governing body may maintain in the same financial institution contracting for the repurchase agreement a demand account into which each business day shall be deposited a sum equal to the day's disbursements, and that deposit will be the proceeds of the redemption by the financial institution of securities previously purchased by the local governing body under the provisions of the repurchase agreement, so that the balance of the demand account at the close of each day's business will be zero.

(5) The local governing body shall call for bids as provided in 7-6-206 to contract for a repurchase agreement from all financial institutions chartered to do business in the state of Montana which are authorized to accept demand deposits and to buy and sell securities. The call for bids shall specify the minimum acceptable rate of interest, effective date of the repurchase agreement and the period of duration and range of funds to be invested.

History: En. Sec. 1, Ch. 329, L. 1981; amd. Sec. 3, Ch. 620, L. 1985.

Part 5

Local Government Levy for Juvenile Detention Programs

7-6-501. Definitions. As used in 7-6-502 and this section, unless the context requires otherwise, the following definitions apply:

(1) “Detention” means the holding or temporary placement of a youth in a facility other than the youth’s own home for the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth’s case.

(2) “Juvenile detention program” means services to provide for the lawful detention or shelter care of youth. The term includes:

(a) youth evaluations ordered by the court under 41-5-1503, 41-5-1512, or 41-5-1513;

(b) programs for the transportation of youth to appropriate detention facilities or shelter care facilities; and

(c) an educational program for youth in need of that service.

(3) “Local government” has the same meaning as provided in 7-12-1103.

(4) “Shelter care” has the same meaning as provided in 41-5-103.

(5) “Youth” means an individual who is less than 18 years of age who is alleged to be a delinquent youth or youth in need of intervention as those terms are defined in 41-5-103.

History: En. Sec. 1, Ch. 745, L. 1991; amd. Sec. 1, Ch. 286, L. 1997; amd. Sec. 1, Ch. 550, L. 1997; amd. Sec. 2, Ch. 536, L. 1999.

7-6-502. Levy for juvenile detention programs. (1) Subject to 15-10-420, a local government may impose a levy on the taxable value of all property within its jurisdiction in an amount determined by the governing body for the purpose of financing the establishment and operation of juvenile detention programs.

(2) Local governments may use the funds derived from a levy authorized in subsection (1) to contract with other units of local government to purchase services from available juvenile detention programs consistent with the purposes of the levy as stated in subsection (1).

History: En. Sec. 2, Ch. 745, L. 1991; amd. Sec. 16, Ch. 574, L. 2001.

Part 11

Tax and Revenue Anticipation Notes

7-6-1101. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) “Governing body” means the legislative authority of a local government, by whatever name designated.

(2) “Local government” means any city, town, county, consolidated city-county, or school district.

(3) “Ordinance” means an ordinance or resolution of the local government.

(4) “Short-term obligations” are tax anticipation notes or revenue anticipation notes that mature at a time not to exceed 13 months from the date issued.

History: En. Sec. 1, Ch. 481, L. 1985.

7-6-1102. Short-term obligations authorized. A local government may issue and sell short-term obligations as provided in this part in anticipation of taxes or revenues budgeted to be received and appropriated for expenditure during the fiscal year in which the obligations are issued. The proceeds of the obligations may be expended solely for the purposes for which the taxes or revenues were appropriated and for costs and expenses incident to the issuance and sale thereof. Pending expenditure, the proceeds may be invested as provided by law. The principal and interest on short-term obligations must be repaid from the money derived from the taxes and revenues in anticipation of which they were issued, income from investment of the proceeds of the obligations, and any money otherwise legally available for this purpose.

History: En. Sec. 2, Ch. 481, L. 1985.

7-6-1103. Issuance and sale of short-term obligations — procedure. (1) The issuance of short-term obligations must be authorized by an ordinance of the governing body that fixes the maximum amount of the obligations to be issued or, if applicable, the maximum amount that

may be outstanding at any time, the maximum term and interest rate or rates to be borne by the obligations, the manner of sale, the maximum price, the form including bearer or registered as provided in Title 17, chapter 5, part 11, the terms, the conditions, and the covenants of the obligations. Short-term obligations issued under this section must bear fixed or variable rate or rates of interest that the governing body considers to be in the best interests of the local government. Variable rates of interest may be fixed in relationship to the standard or index that the governing body designates.

(2) The governing body may sell the short-term obligations at par or at a discount:

(a) at private negotiated sale to the board of investments as provided in Title 17, chapter 5, part 16; or

(b) at public sale to any other person. Any public sale must be noticed as provided in 7-7-4434.

History: En. Sec. 3, Ch. 481, L. 1985; amd. Sec. 4, Ch. 581, L. 1987; amd. Sec. 1, Ch. 423, L. 1995.

7-6-1104 reserved.

7-6-1105. Refunding and renewal of short-term obligations. Short-term obligations may, from time to time, be renewed or refunded by the issuance of short-term obligations. Short-term obligations may not be renewed or refunded to a date later than 6 months from the end of the fiscal year in which the original short-term obligation was issued.

History: En. Sec. 4, Ch. 481, L. 1985.

7-6-1106 through 7-6-1110 reserved.

7-6-1111. Short-term obligations — security. Short-term obligations are general obligations of the local government and must be secured by the taxes and revenues in anticipation of which the short-term obligations were issued and in such other manner as set forth in the ordinance authorizing their issuance.

History: En. Sec. 5, Ch. 481, L. 1985.

7-6-1112. Funds for payment of principal and interest. For the purpose of providing funds for the payment of principal of and interest on short-term obligations, the governing body may authorize the creation of a special fund or funds and provide for the payment from authorized sources to such funds of amounts sufficient to meet principal and interest requirements.

History: En. Sec. 6, Ch. 481, L. 1985.

7-6-1113 and 7-6-1114 reserved.

7-6-1115. Local government debt limitations not to apply to short-term obligations. The debt limitations for local governments in Title 7, chapter 7, and Title 20, chapter 9, do not apply to short-term obligations issued in accordance with this part.

History: En. Sec. 7, Ch. 481, L. 1985.

7-6-1116. Authority cumulative. The authority granted by this part is in addition and supplemental to any other authority granted and does not limit any other authority previously granted to any local government.

History: En. Sec. 8, Ch. 481, L. 1985.

Part 26

County Warrants

7-6-2601. Details related to county warrants — payments to state — definition. (1) Warrants issued pursuant to 7-6-2202(1) must be signed by the county clerk and the presiding officer of the board of county commissioners, except warrants drawn on the redemption fund.

(2) All warrants issued by the county clerk during each year, commencing with the first Monday in January, must be numbered consecutively. The number, date, and amount of each warrant, the name of the person to whom it is payable, and the purpose for which it is drawn must be stated on the warrant. Warrants must, at the time they are issued, be registered by the county clerk.

(3) Warrants drawn by order of the board on the county treasury for the current expenses during each year must specify the liability for which they are drawn and when the liability accrued.

(4) All payments to the state treasurer or a state agency must be made by electronic funds transfer if requested by the state treasurer or the state agency and if the county has the technology to conduct electronic funds transfers.

(5) For the purposes of this part, “warrant” includes a check and an electronic funds transfer.

History: (1)En. Sec. 4424, Pol. C. 1895; re-en. Sec. 3045, Rev. C. 1907; re-en. Sec. 4811, R.C.M. 1921; Cal. Pol. C. Sec. 4204; amd. Sec. 1, Ch. 79, L. 1923; re-en. Sec. 4811, R.C.M. 1935; Sec. 16-2917, R.C.M. 1947; (2)En. Sec. 4425, Pol. C. 1895; re-en. Sec. 3046, Rev. C. 1907; re-en. Sec. 4812, R.C.M. 1921; Cal. Pol. C. Sec. 4219; re-en. Sec. 4812, R.C.M. 1935; Sec. 16-2918, R.C.M. 1947; (3)En. Sec. 4290, Pol. C. 1895; re-en. Sec. 2949, Rev. C. 1907; re-en. Sec. 4612, R.C.M. 1921; Cal. Pol. C. Sec. 4076; re-en. Sec. 4612, R.C.M. 1935; R.C.M. 1947, 16-1810(part), 16-2917(part), 16-2918; amd. Sec. 23, Ch. 252, L. 1979; amd. Sec. 51, Ch. 278, L. 2001; amd. Sec. 1, Ch. 432, L. 2005.

7-6-2602. Payment of warrants. The county treasurer may not pay any order or warrant except to the payee of the warrant or to the payee’s agent, assignee, or legal representative, whose authority must be in writing and delivered to the county treasurer. The written authority must be returned with the order or warrant, when paid, to the board of county commissioners.

History: Ap. p. Sec. 4352, Pol. C. 1895; re-en. Sec. 2988, Rev. C. 1907; re-en. Sec. 4752, R.C.M. 1921; Cal. Pol. C. Sec. 4147; re-en. Sec. 4752, R.C.M. 1935; Sec. 16-2603, R.C.M. 1947; Ap. p. Sec. 4290, Pol. C. 1895; re-en. Sec. 2949, Rev. C. 1907; re-en. Sec. 4612, R.C.M. 1921; Cal. Pol. C. Sec. 4076; re-en. Sec. 4612, R.C.M. 1935; Sec. 16-1810, R.C.M. 1947; (2)En. Sec. 98, p. 453, Cod. Stat. 1871; re-en. Sec. 444, 5th Div. Rev. Stat. 1879; re-en. Sec. 897, 5th Div. Comp. Stat. 1887; re-en. Sec. 4357, Pol. C. 1895; re-en. Sec. 2993, Rev. C. 1907; re-en. Sec. 4757, R.C.M. 1921; re-en. Sec. 4757, R.C.M. 1935; Sec. 16-2608, R.C.M. 1947; R.C.M. 1947, 16-1810(part), 16-2603, 16-2608(part); amd. Sec. 52, Ch. 278, L. 2001.

7-6-2603. Registration of warrants. (1) If the fund is insufficient to pay a warrant, it must be registered and paid in the order of its registration.

(2) The county treasurer may not register any county order or warrant in the name of any person other than the payee except at the request of the payee or the payee’s agent, assignee, or legal representative, whose authority must be produced to the treasurer in writing.

History: (1)En. Sec. 4290, Pol. C. 1895; re-en. Sec. 2949, Rev. C. 1907; re-en. Sec. 4612, R.C.M. 1921; Cal. Pol. C. Sec. 4076; re-en. Sec. 4612, R.C.M. 1935; Sec. 16-1810, R.C.M. 1947; (2)En. Sec. 98, p. 453, Cod. Stat. 1871; re-en. Sec. 444, 5th Div. Rev. Stat. 1879; re-en. Sec. 897, 5th Div. Comp. Stat. 1887; re-en. Sec. 4357, Pol. C. 1895; re-en. Sec. 2993, Rev. C. 1907; re-en. Sec. 4757, R.C.M. 1921; re-en. Sec. 4757, R.C.M. 1935; Sec. 16-2608, R.C.M. 1947; R.C.M. 1947, 16-1810(part), 16-2608(part); amd. Sec. 488, Ch. 61, L. 2007.

Compiler’s Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

7-6-2604. Interest on unpaid warrants. (1) When any high school warrant or any school district warrant is presented to the treasurer for payment and the warrant is not paid for lack of funds, the treasurer shall endorse on the warrant “Not paid for lack of funds”, include the date of presentation, and sign the warrant. When the treasurer pays a warrant on which any interest is due, the treasurer shall note on the warrant the amount of interest paid and enter on the treasurer’s account the amount of interest, distinct from the principal.

(2) After the date of presentation and endorsement by the treasurer, the warrant must bear interest at a rate fixed by the board of trustees in accordance with law.

(3) All county warrants, after having been presented to the county treasurer for payment and endorsed “Not paid for lack of funds in the treasury”, after the date of presentation and endorsement, must draw interest at the rate fixed by the board of county commissioners in accordance with law.

History: Ap. p. Sec. 4353, Pol. C. 1895; amd. Sec. 2, p. 99, L. 1899; re-en. Sec. 2989, Rev. C. 1907; re-en. Sec. 4753, R.C.M. 1921; Cal. Pol. C. Sec. 4148; re-en. Sec. 4753, R.C.M. 1935; amd. Sec. 2, Ch. 15, L. 1941; amd. Sec. 1, Ch. 53, L. 1945; amd. Sec. 25, Ch. 234, L. 1971; Sec. 16-2604, R.C.M. 1947; Ap. p. Sec. 4359, Pol. C. 1895; re-en. Sec. 2995, Rev. C. 1907; re-en. Sec. 4759, R.C.M. 1921; Cal. Pol. C. Sec. 4153; re-en. Sec. 4759, R.C.M. 1935; Sec. 16-2610, R.C.M. 1947; Ap. p. Sec. 1, Ch. 86, L. 1923; re-en. Sec. 4622.1, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1939; amd. Sec. 1, Ch. 11, L. 1963; amd. Sec. 68, Ch. 348, L. 1974; Sec. 16-2002, R.C.M. 1947; R.C.M. 1947, 16-2002, 16-2604, 16-2610; amd. Sec. 33, Ch. 575, L. 1981; amd. Sec. 489, Ch. 61, L. 2007.

Compiler’s Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

7-6-2605. Call for payment of warrants drawing interest. (1) When there is sufficient money to pay the warrants drawing interest, the treasurer shall give notice as provided in 7-1-2121 that the warrants are able to be paid.

(2) In advertising warrants under the provisions of this section in any newspaper, the treasurer may not publish the warrants in detail but shall give notice only that county warrants presented for payment prior to a date stated in the notice are payable. When only a part of the warrants presented for payment on the same day are payable, the treasurer shall designate the payable warrants in the advertisement.

(3) The warrants cease to draw interest from the first publication or posting of the notice.

(4) (a) If the warrants are not re-presented for payment within 60 days from the time the notice is given, the fund set aside for the payment of the warrants must be applied by the treasurer to the payment of unpaid warrants in order of registry.

(b) The board of county commissioners may, on application and presentation of warrants, properly endorsed, which have been advertised, pass an order directing the treasurer to pay the warrants out of any money in the treasury that is not otherwise appropriated.

History: (1), (3)En. Sec. 4354, Pol. C. 1895; re-en. Sec. 2990 Rev. C. 1907; re-en. Sec. 4754, R.C.M. 1921; Cal. Pol. C. Sec. 4149; re-en. Sec. 4754, R.C.M. 1935; Sec. 16-2605, R.C.M. 1947; (2)En. Sec. 4355, Pol. C. 1895; re-en. Sec. 2991, Rev. C. 1907; re-en. Sec. 4755, R.C.M. 1921; Cal. Pol. C. Sec. 4150; re-en. Sec. 4755, R.C.M. 1935; Sec. 16-2606, R.C.M. 1947; (4)En. Sec. 4358, Pol. C. 1895; re-en. Sec. 2994, Rev. C. 1907; re-en. Sec. 4758, R.C.M. 1921; Cal. Pol. C. Sec. 4152; re-en. Sec. 4758, R.C.M. 1935; Sec. 16-2609, R.C.M. 1947; R.C.M. 1947, 16-2605, 16-2606, 16-2609; amd. Sec. 9, Ch. 349, L. 1985; amd. Sec. 490, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

7-6-2606. Order of redemption of warrants. (1) Warrants drawn on the treasury and properly attested are entitled to preference as to payment out of money in the treasury properly applicable to the warrants according to the priority of time in which they were presented. The time of presenting the warrants must be noted by the treasurer.

(2) Upon the receipt of money into the treasury, not otherwise appropriated, the treasurer shall set apart the the money or as much of the money as is necessary for the payment of the warrants.

History: En. Sec. 94, p. 452, Cod. Stat. 1871; amd. Sec. 1, p. 68, L. 1874; re-en. Sec. 440, 5th Div. Rev. Stat. 1879; re-en. Sec. 893, 5th Div. Comp. Stat. 1887; amd. Sec. 4356, Pol. C. 1895; re-en. Sec. 2992, Rev. C. 1907; re-en. Sec. 4756, R.C.M. 1921; Cal. Pol. C. Sec. 4151; re-en. Sec. 4756, R.C.M. 1935; R.C.M. 1947, 16-2607; amd. Sec. 491, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

7-6-2607. Processing of warrants. (1) The board shall cause to be canceled all county warrants that have remained uncalled for 1 year or more in the county clerk's office. The uncalled warrants must be canceled in the same manner as other county warrants. At the same time, the county treasurer shall deliver to the board all warrants or vouchers that are in the county treasurer's possession for money disbursed by the county treasurer and the clerk shall issue a receipt for the warrants or vouchers.

(2) The board shall cause to be entered on the record of warrants, opposite to the entry of each warrant issued, the date when the warrant was canceled and shall make a list of the canceled warrants, specifying the number, date, amount, and the person to whom the warrant was payable. The board shall cause the list to be entered on the minutes of the board.

History: En. Sec. 28, p. 504, Bannack Stat.; amd. Sec. 28, p. 438, Cod. Stat. 1871; re-en. Sec. 362, 5th Div. Rev. Stat. 1879; re-en. Sec. 767, 5th Div. Comp. Stat. 1887; amd. Sec. 4291, Pol. C. 1895; re-en. Sec. 2950, Rev. C. 1907; re-en. Sec. 4613, R.C.M. 1921; re-en. Sec. 4613, R.C.M. 1935; R.C.M. 1947, 16-1811; amd. Sec. 24, Ch. 252, L. 1979; amd. Sec. 53, Ch. 278, L. 2001.

Part 27 Investment of County Money

7-6-2701. Investment of certain money in county, municipal, hospital, and school warrants. (1) If a county has under its control any money for which there is no immediate demand, in any special fund subject to deposit, which in the judgment of the board of county commissioners it would be advantageous to invest in county, municipal, hospital district, or

school district registered warrants, the county commissioners are authorized in their discretion to direct the county treasurer to purchase the warrants of entities located in the same county.

(2) For the purchases, the county commissioners shall:

- (a) designate the fund or funds to be invested;
- (b) fix the amount that may be purchased;
- (c) establish the rate of interest the county must receive for the investment; and
- (d) designate the warrants that are to be purchased by the funds.

(3) The officer drawing a warrant to be purchased for investment by a county shall attach to or stamp, write, or print upon the warrant a notice to the effect that the county will exercise its preference right to purchase the warrant.

(4) (a) A school district, hospital district, or county warrant presented to the county treasurer for purchase by the county must be registered as any other school district, hospital district, or county warrant.

(b) A municipal warrant presented to the municipal clerk or treasurer for purchase by the county must be registered, and the holder of the warrant must be informed that the warrant may be presented to the county treasurer for purchase by the county.

(5) The county treasurer shall, when a warrant designated for purchase under the provisions of subsection (2) is presented to the treasurer, purchase the warrant out of the proper fund as designated by the board. When the designated amounts have been invested, the county treasurer shall notify the county clerk and recorder or the applicable officer authorized to draw the warrants.

(6) Interest earned from the investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, must be credited to the sinking fund of the county, notwithstanding the provisions of 7-6-204(1).

(7) A provision of this section may not be construed to prevent the investment of county or county high school money under the state unified investment program established in Title 17, chapter 6, part 2.

History: En. Sec. 1, Ch. 144, L. 1927; re-en. Sec. 4639.1, R.C.M. 1935; amd. Sec. 1, Ch. 151, L. 1951; amd. Sec. 1, Ch. 223, L. 1961; amd. Sec. 1, Ch. 13, L. 1963; amd. Sec. 1, Ch. 268, L. 1969; amd. Sec. 1, Ch. 421, L. 1973; amd. Sec. 1, Ch. 304, L. 1975; R.C.M. 1947, 16-2050(part); amd. Sec. 1, Ch. 92, L. 1985; amd. Sec. 1, Ch. 349, L. 1991; amd. Sec. 1, Ch. 219, L. 1997.

Part 28 Management of School Money

7-6-2801. Management of school funds. The county treasurer shall:

(1) keep all school money in a separate fund and keep a separate account of its disbursement to the several school districts that are entitled to receive it, according to the apportionment of the county superintendent of schools;

(2) notify the county superintendent of the amount of the county school fund in the county treasury subject to apportionment, whenever required, and inform the superintendent of the amount of school money belonging to any other fund subject to apportionment, or as otherwise provided by law;

(3) pay all warrants drawn on county or district school money, in accordance with the provisions of law, whenever the warrants are countersigned by the district clerk and properly endorsed by the holders;

(4) make annually, during the month of September, a financial report for the preceding year ending August 31 to the county superintendent, in a form required by the superintendent.

History: En. Sec. 4350, Pol. C. 1895; re-en. Sec. 2986, Rev. C. 1907; re-en. Sec. 4750, R.C.M. 1921; Cal. Pol. C. Sec. 4144; re-en. Sec. 4750, R.C.M. 1935; amd. Sec. 3, Ch. 452, L. 1975; R.C.M. 1947, 16-2601(6) thru (9); amd. Sec. 25, Ch. 252, L. 1979; amd. Sec. 492, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

CHAPTER 7 DEBT MANAGEMENT

Part 1 General Provisions Related to Local Governments

7-7-101. Repealed. Sec. 14, Ch. 94, L. 2007.

History: En. Sec. 1, Ch. 139, L. 1939; R.C.M. 1947, 82-410(part); amd. Sec. 1, Ch. 248, L. 1979.

7-7-102. Repealed. Sec. 14, Ch. 94, L. 2007.

History: En. Sec. 4, Ch. 139, L. 1939; R.C.M. 1947, 82-413(part); amd. Sec. 2, Ch. 248, L. 1979.

7-7-103. Repealed. Sec. 14, Ch. 94, L. 2007.

History: En. Sec. 2, Ch. 139, L. 1939; R.C.M. 1947, 82-411(part); amd. Sec. 3, Ch. 248, L. 1979; amd. Sec. 5, Ch. 511, L. 1989; amd. Sec. 5, Ch. 559, L. 1993.

7-7-104. Limitation on action to test bond validity. A local government general obligation bond of any issue may not be held invalid because of any defect or failure to comply with a statutory provision relating to the authorization, issuance, or sale of the bonds unless an action to contest the validity of the bonds is brought within 30 days after the date of the adoption of the resolution calling for the sale of bonds of the local government.

History: En. Sec. 3, Ch. 139, L. 1939; R.C.M. 1947, 82-412; amd. Sec. 4, Ch. 248, L. 1979; amd. Sec. 1, Ch. 451, L. 2005; amd. Sec. 1, Ch. 94, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 94 near beginning after "issue" deleted "in which the preliminary proceedings have been submitted to and approved by the attorney general"; and made minor changes in style. Amendment effective October 1, 2007.

7-7-105. Challenges to local government bond elections. (1) No action may be brought for the purpose of restraining the issuance and sale of bonds or other obligations by any county, city, town, or political subdivision of the state or for the purpose of restraining the levy and collection of taxes for the payment of such bonds or other obligations after the expiration of 60 days from the date of the election on such bonds or obligations or, if no election was held thereon, after the expiration of 60 days from the date of the order, resolution, or ordinance authorizing the issuance thereof, on account of any defect, irregularity, or informality in giving notice of or in holding the election. No defense based upon any such defect, irregularity, or informality may be interposed in any action unless brought within this period. This subsection applies but is not limited to any action and defense in which the issue is raised whether a voted debt or liability has carried by the required majority vote of the electors qualified and offering to vote thereon.

(2) (a) Any elector qualified to vote in a bond election of a county, a city, or any political subdivision of either may contest a bond election for any of the following causes:

(i) that the precinct board, in conducting the election or in canvassing the returns, made errors sufficient to change the result of the election;

(ii) that any official charged with a duty under the election laws failed to perform that duty;

(iii) that in conducting the election, any official charged with a duty under the election laws violated any of the provisions of Title 13 relating to bond elections;

(iv) that electors qualified to vote in the election under the provisions of the constitutions of Montana and the United States were not given opportunity to vote in the election;

(v) that electors not qualified to vote in the election under the provisions of the constitutions of Montana and the United States were permitted to vote in the election.

(b) Within 60 days after the election, the contestant shall file a verified petition with the clerk of the court in the judicial district where the election was held.

(3) The word "action", as used in this section, is to be construed, whenever it is necessary to do so, as including a special proceeding of a civil nature.

History: (1)En. Sec. 1, Ch. 114, L. 1919; re-en. Sec. 9040, R.C.M. 1935; amd. Sec. 15, Ch. 158, L. 1971; Sec. 93-2612, R.C.M. 1947; (2)En. Sec. 212, Ch. 368, L. 1969; amd. Sec. 6, Ch. 158, L. 1971; Sec. 23-4201, R.C.M. 1947; (3)En. Sec. 559, C. Civ. Proc. 1895; re-en. Sec. 6476, Rev. C. 1907; re-en. Sec. 9066, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 363; re-en. Sec. 9066, R.C.M. 1935; Sec. 93-2720, R.C.M. 1947; R.C.M. 1947, 23-4201, 93-2612(part), 93-2720; amd. Sec. 1, Ch. 212, L. 1979.

7-7-106. Hearing and determination on challenge. (1) Within 5 days after the petition is filed, the district judge shall designate the time and place of hearing.

(2) The clerk shall immediately issue a citation for the defendant to appear at the time and place specified in the order and shall serve the citation immediately upon the defendant either:

(a) personally; or

(b) if the party cannot be found, by leaving a copy at the house where the defendant last resided.

(3) The court shall meet at the time and place designated to determine the contested election and has all the powers necessary to the determination of the election.

(4) The court is governed by the rules of law and evidence governing the determination of questions of law and fact so far as the rules may be applicable.

(5) The court shall continue in special session to hear and determine all issues in the contested election. After hearing the proofs and allegations of the parties and within 10 days after submission, the court shall file its findings of fact and conclusions of law and shall immediately pronounce judgment, either confirming or annulling and setting aside the election. The judgment must be entered immediately after the pronouncement.

History: En. Sec. 213, Ch. 368, L. 1969; R.C.M. 1947, 23-4202; amd. Sec. 499, Ch. 61, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

7-7-107. Limitation on amount of bonds for city-county consolidated units. (1) Except as provided in 7-7-108, a city-county consolidated local government may not issue bonds for any purpose in an amount that, with all outstanding indebtedness, exceeds 2.5% of the total assessed value of taxable property, determined as provided in 15-8-111, within the consolidated government, as ascertained by the last assessment for state and county taxes.

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness.

History: En. 16-2010.1 by Sec. 1, Ch. 175, L. 1975; amd. Sec. 39, Ch. 566, L. 1977; R.C.M. 1947, 16-2010.1(part); amd. Sec. 43, Ch. 614, L. 1981; amd. Sec. 3, Ch. 285, L. 1999; amd. Sec. 22, Ch. 426, L. 1999; amd. Sec. 17, Ch. 556, L. 1999; amd. Sec. 5, Ch. 29, L. 2001.

7-7-108. Authorization for additional indebtedness for water or sewer systems. (1) For the purpose of constructing a sewer system or procuring a water supply or constructing or acquiring a water system for a city-county consolidated government that owns and controls the water supply and water system and devotes the revenue from the supply and system to the payment of the debt, a city-county consolidated government may incur an additional indebtedness by borrowing money or issuing bonds.

(2) The additional indebtedness that may be incurred by borrowing money or issuing bonds for the construction of a sewer system or for the procurement of a water supply or for both purposes may not in the aggregate exceed 10% over and above the debt limitation referred to in 7-7-107.

History: En. 16-2010.1 by Sec. 1, Ch. 175, L. 1975; amd. Sec. 39, Ch. 566, L. 1977; R.C.M. 1947, 16-2010.1(part); amd. Sec. 44, Ch. 614, L. 1981; amd. Sec. 4, Ch. 285, L. 1999; amd. Sec. 6, Ch. 29, L. 2001.

7-7-109. Definitions — sale of notes in anticipation of federal or state revenue or issuance of bonds. (1) As used in this section, the following definitions apply:

(a) "Bonds" means bonds, notes, warrants, debentures, certificates of indebtedness, and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien, or encumbrance on specific revenue, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

(b) "Governing body" means the board, council, commission, or other body charged with the general control of the issuance of bonds of a political subdivision.

(c) (i) "Political subdivision" means a county, city, town, school district, irrigation district, rural special improvement district, special improvement district, county water or sewer district, or any other political subdivision of the state.

(ii) The term does not include the state or any board, agency, or commission of the state.

(2) (a) When all conditions exist precedent to the offering for sale of bonds of a political subdivision in any amount and for any purpose authorized by law or the political subdivision has applied for and received a commitment for a grant or loan of state or federal funds, its governing body may by resolution issue and sell, in anticipation of the receipt of the grant, loan, or bonds in an amount not exceeding the total amount of bonds authorized or the total amount of the loan or grant that is committed, notes maturing within not more than 3 years from the date on which the notes are issued.

(b) The outstanding term of the notes issued under this section may not reduce the term of the bonds otherwise permitted by law. Before the notes are issued, the political subdivision must receive a written commitment for the purchase of the bonds or for the grant or loan in an amount that in the aggregate is not less than the principal amount of the notes and shall by resolution agree to fulfill any conditions of the commitment.

(3) The proceeds of the grant, loan, or bonds, when received, must be credited to the debt service fund for the notes as may be needed for their payment, with interest, when due.

(4) (a) To the extent that proceeds described in subsection (3) are not sufficient to pay the notes and interest on those notes when due, the notes must be paid from any other funds that are legally available and appropriated by the governing body for that purpose.

(b) If the notes are issued in anticipation of the issuance of bonds, any amount of the notes that cannot be paid at maturity from the proceeds described in subsection (3) or (4)(a) must be paid from the proceeds of bonds to be issued and sold before the maturity date.

(c) If sufficient funds are not available for payment in full of the notes at maturity, the holders of the notes have the right to require the issuance of bonds in exchange for the notes, with the bonds maturing, bearing interest at a rate, and secured over a term as provided in the resolution authorizing the issuance of the notes.

(d) If notes are validly issued under then-applicable law in anticipation of the issuance of bonds, the political subdivision may issue bonds in a principal amount equal to the outstanding principal amount of the notes, regardless of any limitation in the then-applicable law concerning the principal amount of the bonds.

(e) If the notes are issued in anticipation of the receipt of a grant or other revenue source and cannot be paid at maturity from the proceeds described in subsection (3) or (4)(a), the political subdivision may, to the extent otherwise authorized by law, issue bonds to provide for payment of those notes.

History: En. Secs. 1, 2, Ch. 181, L. 1979; amd. Sec. 1, Ch. 512, L. 1985; amd. Sec. 2, Ch. 423, L. 1995; amd. Sec. 2, Ch. 451, L. 2005.

7-7-110. Authorization of bonds. (1) Upon approval by the Montana transportation commission, a city, county, or consolidated city-county government may issue revenue bonds to finance the construction and construction engineering phases of projects on the urban highway system within its jurisdiction to:

(a) fund the share that the bond issuer might otherwise expend for proportionate matching of federal funds allocated for the construction of highways, roads, streets, or bridges;

(b) make a deposit to a reserve fund securing the bonds; and

(c) pay costs of issuance and sale of the bonds.

(2) The bonds may be authorized by a resolution adopted by the governing body of the bond issuer without need for authorization by the electors of the bond issuer. The resolution must establish the terms, covenants, and conditions of the bonds. The resolution may authorize that the bonds be issued under and secured by a trust indenture between the issuer and a trustee, which may be a trust company or bank having the power of a trustee inside or outside the state. The bonds may be sold at public or private sale, on terms and at prices that the governing body determines to be advantageous. The bonds do not constitute and may not be included as an indebtedness or liability of the issuer for purposes of any statutory debt limitation, do not constitute general obligations, and may not be secured by the taxing power of the issuer.

(3) The bonds are payable from and secured by the grants or other funds payable to and received by the department of transportation and apportioned by the department of transportation to the issuer of the bonds for urban highway system improvements or for improvements conducted as provided in 15-70-101(2). In the resolution or the trust indenture

providing for the issuance of the bonds, the governing body of the issuer shall irrevocably pledge and appropriate to the debt service fund from which the bonds are payable the funds apportioned or to be apportioned to the issuer by the department of transportation in an amount sufficient to pay the principal of and the interest on the bonds as due.

(4) Bonds may be issued under this section only if:

(a) the bonds are issued in principal amounts and on terms that provide that the amount of principal and interest due in any fiscal year on the bonds and on any other revenue bonds of the issuer outstanding and issued under this section does not exceed the amount of the revenue pledged to the payment of the bonds and to be received in that fiscal year as estimated by the governing body of the issuer in the resolution authorizing the issuance of the bonds; and

(b) the final maturity of the bonds is not more than 20 years after the date of issuance of the bonds.

(5) Proceeds from the sale of the bonds must be used to fund urban highway system projects approved by the transportation commission through an agreement with the issuer in accordance with 60-2-127(4), and the proceeds to be used for the construction must be deposited with the department of transportation. The proceeds must be expended by the department of transportation in accordance with other applicable provisions of law.

(6) A city, county, or consolidated city-county government issuing bonds pursuant to this section shall certify to the director of the department of transportation and the director of the department of administration promptly upon the issuance of the bonds the principal amount and terms of the bonds and the amount of money required each fiscal year for the payment of principal and interest on the bonds.

(7) The powers conferred on a city, county, or consolidated city-county government by this section are in addition to and are supplemental to the powers conferred by any other general, special, or local laws. To the extent that the provisions of this section are inconsistent with the provisions of any other general, special, or local law, the provisions of this section are controlling.

History: En. Sec. 1, Ch. 336, L. 2005.

7-7-111 through 7-7-120 reserved.

7-7-121. Misconduct in relation to bond funds. (1) (a) Except as provided in subsection (1)(b), when any officer or officers or board or body of officers of any county, city, or other municipal or public corporation of the state are or shall be required by law to provide by a levy of taxes or by certifying the amount of money required or otherwise a sinking fund or fund required to pay at maturity any bonds hereafter issued or created, such officer or officers and the members of such board or body of officers shall be jointly and severally liable to the county, city, or other municipal or public corporation which they represent if they shall fail to perform any such duties required by law, as specified in this section, in an amount equal to the sum which would have been added to such fund had they performed such duty.

(b) When any such board shall fail or neglect to perform any such duty, no minority member of said board who shall have moved said board or voted in favor of a performance of such duty shall be held liable.

(2) Any person or persons who shall take, use, or appropriate or permit to be taken, used, or appropriated any portion of any such fund as herein specified for any purpose other than that permitted by law shall be jointly and severally liable to the county, city, or other municipal or public corporation to which said fund shall belong for the portion of such fund so unlawfully taken, used, or appropriated.

History: (1)En. Sec. 1, Ch. 5, L. 1923; re-en. Sec. 463.1, R.C.M. 1935; Sec. 59-534, R.C.M. 1947; (2)En. Sec. 2, Ch. 5, L. 1923; re-en. Sec. 463.2, R.C.M. 1935; Sec. 59-535, R.C.M. 1947; R.C.M. 1947, 59-534(part), 59-535(part).

7-7-122. Prosecution for misconduct. It shall be the duty of the county attorney in each county to commence and prosecute all actions to enforce any liability created in 7-7-121. Such actions shall be tried as civil actions at law.

History: En. Sec. 3, Ch. 5, L. 1923; re-en. Sec. 463.3, R.C.M. 1935; R.C.M. 1947, 59-536.

7-7-123. Investment of sinking funds of local governments. (1) (a) Except as provided in 7-7-124 and whenever outstanding bonds cannot be purchased pursuant to 7-7-2270 or 7-7-4270, the board of county commissioners of a county and the council or commission of a city or town shall invest so much of the bond sinking funds of the county, city, or town as are not

needed for the payment of bonds or interest coupons in general obligation bonds or securities of the United States; state bonds or securities; time or savings deposits; county, city, or school district bonds; county or city warrants; or other bonds or securities that are supported by general taxation, except irrigation district bonds and special improvement district or maintenance district bonds or warrants.

(b) All those bonds, securities, or time or savings deposits must be due and payable at least 60 days before the obligations for the payment of which the sinking fund was established are due and payable.

(2) The bonds, securities, and any time or savings deposits in which any sinking funds are invested must be kept in the custody of the county or city treasurer or town clerk and held for the benefit of the county, city, or town. The treasurer shall properly protect the bonds, securities, and any time or savings deposits by insurance, the use of safety deposit boxes, or other means, the expense of which is a proper charge against the county, city, or town.

(3) All money derived from interest on sinking fund investments as authorized by this section must be credited by the treasurer of the county or city or the town clerk to the sinking fund for which the investment was made.

History: En. Sec. 1, Ch. 86, L. 1923; re-en. Sec. 4622.1, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1939; amd. Sec. 1, Ch. 11, L. 1963; amd. Sec. 68, Ch. 348, L. 1974; R.C.M. 1947, 16-2001(part); amd. Sec. 1, Ch. 256, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 8, Ch. 179, L. 1995.

7-7-124. Limitation on investment of sinking funds. If any of the bonds for which the sinking fund was established are not yet due but are then redeemable under optional provisions, the money in the sinking fund is not subject to investment but shall be used and applied in payment and redemption of the bonds.

History: En. Sec. 1, Ch. 86, L. 1923; re-en. Sec. 4622.1, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1939; amd. Sec. 1, Ch. 11, L. 1963; amd. Sec. 68, Ch. 348, L. 1974; R.C.M. 1947, 16-2001(part); amd. Sec. 2, Ch. 256, L. 1979.

7-7-125 through 7-7-130 reserved.

7-7-131. Bankruptcy — definitions. As used in 7-7-132 through 7-7-134 and this section, the following definitions apply:

(1) “Legislative body” means:

(a) the governing body of a city or town;

(b) the governing body of a local entity that is a district if, by law, the district must have a governing body; or

(c) the governing body of the city, town, or county that created a local entity that is a district if law does not require the district to have a separate governing body. Unless otherwise agreed to by the governing bodies of the county and of the city or town, a joint board composed of an equal number of members from each governing body shall act as the district governing body of a district that was jointly created by the county and the city or town.

(2) “Local entity” means a district created under Title 7, chapter 12, a city, or a town, but the term does not include a county.

History: En. Sec. 1, Ch. 296, L. 1995.

7-7-132. Procedure to declare bankruptcy. (1) A local entity may submit itself and a proposed plan of adjustment to the jurisdiction of the bankruptcy court having jurisdiction of the matter. If the local entity submits a proposed plan of adjustment, it is governed, subject to the provisions of Montana law applicable to the local entity, by the proceedings, orders, and decrees of the court as provided by the federal municipal bankruptcy laws.

(2) The local entity shall compose and enter into, submit itself to, and perform the plan of adjustment as required by the federal laws and the orders and decrees of the bankruptcy court:

(a) upon the adoption by its legislative body of an ordinance or resolution:

(i) declaring that it is insolvent or unable to meet its debts as they mature;

(ii) declaring that it desires to effect a plan for the adjustment of its debts under the provisions of the federal municipal bankruptcy laws; and

(iii) providing that the local entity shall proceed to the adjustment of its indebtedness under the provisions of the federal laws; and

(b) upon the acceptance or considered acceptance of the proposed plan of adjustment of the petitioning local entity as provided in the federal laws.

History: En. Sec. 1, Ch. 114, L. 1939; R.C.M. 1947, 11-1303; amd. Sec. 3, Ch. 212, L. 1979; amd. Sec. 2, Ch. 296, L. 1995; Sec. 7-7-4111, MCA 1993; redes. 7-7-132 by Code Commissioner, 1995.

7-7-133. Power to comply with court decrees related to bankruptcy. A local entity shall comply with all orders and decrees contemplated by the federal municipal bankruptcy laws and may issue its bonds and other securities for the carrying out and consummation of the adjustment of its debts as provided and contemplated by the federal law and as required by the orders and decrees of the bankruptcy court. The orders and decrees of the bankruptcy court must be based on the Montana law applicable to the local entity.

History: En. Sec. 2, Ch. 114, L. 1939; R.C.M. 1947, 11-1304(part); amd. Sec. 4, Ch. 212, L. 1979; amd. Sec. 3, Ch. 296, L. 1995; Sec. 7-7-4112, MCA 1993; redes. 7-7-133 by Code Commissioner, 1995.

7-7-134. Role of state and state agencies in relation to bankruptcy. The state or any department or agency of the state holding any of the securities of a local entity has the power to consent to any plan of adjustment of the indebtedness of the local entity by the board or official that has custody of and control over the securities.

History: En. Sec. 2, Ch. 114, L. 1939; R.C.M. 1947, 11-1304(part); amd. Sec. 4, Ch. 296, L. 1995; Sec. 7-7-4113, MCA 1993; redes. 7-7-134 by Code Commissioner, 1995.

CHAPTER 8 ACQUISITION, TRANSFER, AND MANAGEMENT OF PROPERTY AND BUILDINGS

Part 1 General Provisions Related to Local Government

7-8-101. Authorization to transfer property between certain governmental entities. (1) A county, upon first passing a resolution of intent to do so and upon giving notice of intent by publication as provided in 7-1-2121, may sell or trade to any city, town, or political subdivision, as the interests of its inhabitants require, any property, however held or acquired, that is not necessary for the conduct of the county business without an ordinance, public notice, public auction, bids, or appraisal. Proceeds, if any, must be distributed according to law. The transactions must be made by resolution of the county commissioners involved and entered in the minutes of the regular or special meetings.

(2) A city or town, upon first passing a resolution of intent to do so and upon giving notice of the intent by publication as provided in 7-1-4127, may sell or trade to any county or political subdivision, as the interests of its inhabitants require, any property, however held or acquired, that is not necessary for the conduct of the city or town business without an ordinance, public notice, public auction, bids, or appraisal. Proceeds, if any, must be distributed according to law. The transactions must be made by resolution of the councils or commissions involved and entered in the minutes of the regular or special meetings.

(3) (a) A county may trade with or purchase from any city, town, or political subdivision any property without an appraisal of the property traded or purchased.

(b) A city or town may trade with or purchase from any county or political subdivision any property without an appraisal of the property traded or purchased.

History: (1)En. Sec. 1, Ch. 302, L. 1969; Sec. 16-1009.1, R.C.M. 1947; (2)En. Sec. 1, Ch. 301, L. 1969; Sec. 11-964.1, R.C.M. 1947; (3)(a)En. Sec. 2, Ch. 302, L. 1969; Sec. 16-1007.1, R.C.M. 1947; (3)(b)En. Sec. 2, Ch. 301, L. 1969; Sec. 11-964.2, R.C.M. 1947; R.C.M. 1947, 11-964.1, 11-964.2, 16-1007.1, 16-1009.1; amd. Sec. 10, Ch. 349, L. 1985; amd. Sec. 17, Ch. 354, L. 2001.

7-8-102. Authorization to deed county land to other governmental entities. (1) The county commissioners of any county in Montana are hereby authorized to convey to the state of Montana or to any city or town in Montana or to the United States of America any tract of county-owned land, not exceeding 1,280 acres, to be used for the establishment and maintenance of a park, recreational grounds, or cemetery and to be maintained by the state, city, town, or federal government as a public park, recreational grounds, or cemetery.

(2) Said land shall be deeded to the state, city, town, or federal government without charge but upon the condition that the same shall be devoted and maintained by the state, city, town, or

federal government for the purpose specified in subsection (1). In the event that the land shall cease to be used for such purpose for a period of 5 years in succession, the title thereto shall revert to the county making such grant.

History: En. Sec. 1, Ch. 139, L. 1935; re-en. Sec. 4487.1, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1961; amd. Sec. 1, Ch. 7, L. 1977; R.C.M. 1947, 16-1131(part).

7-8-103. Authorization for governmental and public entities to take property by gift or devise. (1) (a) All counties, all public hospitals and cemeteries, and other public institutions are hereby granted the power and authority to accept, receive, take, hold, and possess any gift, donation, grant, devise, or bequest of real or personal property and the right to own, hold, work, and improve the same.

(b) The provisions of subsection (2) and 7-8-104 are hereby made expressly applicable to gifts, donations, grants, devises, and bequests of real or personal property to officers and boards of the public corporations and institutions mentioned in subsection (1)(a).

(2) (a) Any city or town organized under the laws of Montana is hereby empowered and given the right:

(i) to accept, receive, take, hold, own, and possess any gift, donation, grant, devise, or bequest; any property (real, personal, or mixed); any improved or unimproved park or playground; any water, water right, water reservoir, or watershed; any timberland or reserve; or any fish or game reserve in any part of the state;

(ii) to own, hold, work, and improve the same.

(b) Said gifts, donations, grants, devises, or bequests made to any officer or board of any such city or town shall be considered a gift, donation, grant, devise, or bequest made for the use and benefit of any such city or town and shall be administered and used by and for such city or town for the particular purpose for which the same was given, donated, granted, devised, or bequeathed. In the event no particular purpose is mentioned in such gift, donation, grant, devise, or bequest, then the same shall be used for the general support, maintenance, or improvement of any such city or town.

History: Ap. p. Sec. 1, Ch. 47, L. 1927; re-en. Sec. 5668.17, R.C.M. 1935; Sec. 11-1006, R.C.M. 1947; Ap. p. Sec. 2, Ch. 47, L. 1927; re-en. Sec. 5668.18, R.C.M. 1935; Sec. 11-1007, R.C.M. 1947; Ap. p. Sec. 1, Ch. 10, L. 1917; re-en. Sec. 5043, R.C.M. 1921; re-en. Sec. 5043, R.C.M. 1935; Sec. 11-1004, R.C.M. 1947; Ap. p. Sec. 2, Ch. 10, L. 1917; re-en. Sec. 5044, R.C.M. 1921; re-en. Sec. 5044, R.C.M. 1935; Sec. 11-1005, R.C.M. 1947; R.C.M. 1947, 11-1004, 11-1005(part), 11-1006(part), 11-1007.

7-8-104. Who may make gift or devise to governmental entities. (1) Any company, partnership, corporation, or other nonindividual entity may make to a city or town organized under the laws of Montana a donation, gift, or grant of any property (real, personal, or mixed); any improved or unimproved park or playground; any water, water right, water reservoir, or watershed; any timberland or reserve; or any fish or game reserve in any part of Montana, to be held for the use and benefit of the city or town.

(2) Any person over the age of 18 years and of sound mind and discretion may make to a city or town organized under the laws of Montana a gift, grant, donation, or testamentary disposition of property (real, personal, or mixed); any improved or unimproved park or playground; any water, water right, water reservoir, or watershed; any timberland or reserve; or any fish or game reserve in any part of the state.

History: En. Sec. 2, Ch. 10, L. 1917; re-en. Sec. 5044, R.C.M. 1921; re-en. Sec. 5044, R.C.M. 1935; R.C.M. 1947, 11-1005(part); amd. Sec. 11, Ch. 311, L. 1979.

Part 22 Acquisition, Transfer, and Management of County Property

7-8-2216. Sale of county property to school district. (1) The board of county commissioners shall have the power to sell directly to the school district, without the necessity of a public auction, any real or personal property, however acquired, belonging to the county and which is not necessary to the conduct of the county's business or the preservation of its property, for its appraised value, which shall represent a fair market value of such property.

(2) If the property to be sold to the school district is reasonably of a value in excess of \$2,500, notice of the sale shall be given by publication as provided in 7-1-2121.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(2); amd. Sec. 4, Ch. 346, L. 1983; amd. Sec. 12, Ch. 349, L. 1985.

CHAPTER 11 GENERAL PROVISIONS RELATED TO SERVICES

Part 1 Interlocal Agreements

7-11-101. Short title. This part shall be known and cited as the “Interlocal Cooperation Act”.

History: En. Sec. 2, Ch. 82, L. 1967; R.C.M. 1947, 16-4902.

7-11-102. Purpose. It is the purpose of this part to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other local governmental units on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

History: En. Sec. 1, Ch. 82, L. 1967; R.C.M. 1947, 16-4901.

7-11-103. Definition. For the purposes of this part, the term “public agency” shall mean any political subdivision, including municipalities, counties, school districts, and any agency or department of the state of Montana.

History: En. Sec. 3, Ch. 82, L. 1967; R.C.M. 1947, 16-4903.

7-11-104. Authorization to create interlocal agreements — issuance of bonds for joint construction — hiring of teacher, specialist, or superintendent. One or more public agencies may contract with any one or more other public agencies to perform any administrative service, activity, or undertaking or to participate in the provision or maintenance of any public infrastructure facility, project, or service, including the issuance of bonds for the joint construction of a facility under 20-9-404, the hiring of a teacher or specialist under 20-4-201 or a superintendent under 20-4-401, or the hiring of or contracting with any other professional person licensed under Title 37, that any of the public agencies entering into the contract is authorized by law to perform. The contract must be authorized and approved by the governing body of each party to the contract. The contract must outline fully the purposes, powers, rights, obligations, and responsibilities of the contracting parties.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(part); amd. Sec. 1, Ch. 397, L. 1997; amd. Sec. 2, Ch. 86, L. 1999; amd. Sec. 1, Ch. 318, L. 2001.

7-11-105. Detailed contents of interlocal agreements. The contract authorized by 7-11-104 must specify the following:

- (1) its duration;
- (2) the precise organization, composition, and nature of any separate legal entity created by the contract;
- (3) the purpose or purposes of the interlocal contract;
- (4) the manner of financing the joint or cooperative undertaking and establishing and maintaining a budget for the undertaking;
- (5) the permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and, if applicable, for disposing of property upon a partial or complete termination;
- (6) provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking, including representation of the contracting parties on the joint board;
- (7) if applicable, the manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking;
- (8) the contracting party responsible for reports and payment of retirement system contributions pursuant to 19-2-506;

(9) if applicable, the manner of sharing the employment of a teacher or specialist under 20-4-201, a superintendent under 20-4-401, or a professional person licensed under Title 37; and
(10) any other necessary and proper matters.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(1) thru (8); amd. Sec. 3, Ch. 99, L. 2001; amd. Sec. 2, Ch. 318, L. 2001.

7-11-106. Repealed. Sec. 2, Ch. 83, L. 1991.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(9).

7-11-107. Filing of interlocal agreement. The interlocal contract made pursuant to this part must be filed with:

(1) the county clerk and recorder of the county or counties where the political agencies are situated; and

(2) the secretary of state.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(10); amd. Sec. 1, Ch. 83, L. 1991.

7-11-108. Authorization to appropriate funds for purpose of interlocal agreement. Any public agency entering into an interlocal contract pursuant to this part may appropriate funds for and may sell, lease, or otherwise give or supply to the administrative board created for the purpose of performance of said contract and may provide such personnel or services therefor as may be within its legal power to furnish.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(11).

Part 11 Multijurisdictional Service Districts

7-11-1101. Authority to form multijurisdictional service district. Municipalities and counties may form multijurisdictional service districts to provide:

(1) a higher level of service than is available through the local governments forming such a district; or

(2) services that are not available through the governments forming such a district.

History: En. Sec. 1, Ch. 425, L. 1985.

7-11-1102. Services that may be provided. (1) A multijurisdictional service district may provide only those services that are authorized to be provided by local governments.

(2) The services that a multijurisdictional service district may provide are:

(a) recreation programs other than park and recreation programs in a county park district established under Title 7, chapter 16, part 24;

(b) road, street, and highway maintenance;

(c) libraries;

(d) jails;

(e) dog control programs;

(f) ambulance service;

(g) dispatch service;

(h) protection of human health and the environment, including scenic concerns and recreational activities for areas requiring or involving environmental reclamation;

(i) health services and health department functions; and

(j) maintenance or provision of any public infrastructure facility, project, or service.

History: En. Sec. 2, Ch. 425, L. 1985; amd. Sec. 8, Ch. 425, L. 1985; amd. Sec. 1, Ch. 193, L. 1991; amd. Sec. 1, Ch. 116, L. 1993; amd. Sec. 1, Ch. 114, L. 1997; amd. Sec. 8, Ch. 459, L. 1997; amd. Sec. 3, Ch. 86, L. 1999.

7-11-1103 and 7-11-1104 reserved.

7-11-1105. Creation of district. (1) A multijurisdictional service district is established by an interlocal agreement among participating jurisdictions, as authorized by an ordinance of each of the jurisdictions, to form the district. An ordinance, for the purposes of this part, includes a resolution of a county not having the power to enact ordinances.

(2) The authorizing ordinance may be passed by the governing body of the jurisdiction or it may be initiated by a petition signed by 15% of the resident property taxpayers of the area proposed for the district in each jurisdiction.

(3) Prior to determining the boundary of the district, the governing body or persons preparing a petition shall consult with the county election administrator to prepare a description of the boundary of the proposed district. As far as practical, the boundary shall follow precinct, school district, municipal, and county lines. The boundary description must be mapped and clearly described.

History: En. Sec. 5, Ch. 425, L. 1985.

7-11-1106. Ordinance and petition requirements. An ordinance or petition for an ordinance to authorize a multijurisdictional service district must include:

- (1) the name of the proposed district;
- (2) the services to be provided by the proposed district;
- (3) a statement of convenience and necessity;
- (4) a boundary map of the proposed district;
- (5) estimated costs of services and methods of financing the district;
- (6) the method of administering the proposed district; and
- (7) subject to 15-10-420, the maximum property tax mill levy for property taxes in the district.

History: En. Sec. 6, Ch. 425, L. 1985; amd. Sec. 30, Ch. 584, L. 1999.

7-11-1107. Adoption of ordinance — protest. (1) Upon receipt of a petition to enact an authorizing ordinance, the governing body of each jurisdiction may either adopt the substantive provisions of the petition as an ordinance or decline to adopt an authorizing ordinance for the district. The action on the petition is subject to the provisions of initiative and referendum as provided in 7-5-131 through 7-5-137.

(2) (a) Upon adoption of a multijurisdictional service district authorizing ordinance, notice must be published in a newspaper of general circulation in the jurisdiction.

(b) Each notice must set forth the text or substance of the ordinance and the text of subsection (2)(c).

(c) Within 30 days of the publication of the notice, electors or property owners of each portion of the proposed district may submit written protests to the local government clerk. If more than 50% of the electors, or the owners of more than 50% of the taxable value of the property, in the affected portion of any one of the jurisdictions proposed for inclusion in the district protest the ordinance of that jurisdiction, the ordinance is void.

History: En. Sec. 7, Ch. 425, L. 1985.

7-11-1108 through 7-11-1110 reserved.

7-11-1111. Administration. (1) A multijurisdictional service district must be administered according to an interlocal agreement among the participating jurisdictions within the district.

(2) The governing body of a multijurisdictional service district may consist of the entire membership of all governing bodies of the participating jurisdictions, or it may be a joint board with representation as set forth in the interlocal agreement forming the district.

(3) An interlocal agreement under this part may enlarge an existing service district or city or county library, but it may not supersede or void an existing contract or interlocal agreement under which the same service is currently provided to residents of one or more of the participating jurisdictions.

(4) A library established under this part as a multijurisdictional service must be administered according to the provisions of 22-1-305 through 22-1-317.

History: En. Sec. 3, Ch. 425, L. 1985.

7-11-1112. Financing. (1) Subject to 15-10-420, local governments organizing a multijurisdictional service district are authorized to levy property taxes in an amount not to exceed that authorized for the district in 7-11-1106 and to appropriate funds derived from other than general tax revenues for the operation of the district. Subject to 15-10-420, property taxes levied for a library established under this part as a multijurisdictional service must be added to taxes levied under 22-1-304.

(2) A property tax levied for the purpose of financing the district must, for all agricultural property having an area greater than 10 acres, be levied only on the principal residential dwelling, if any, on the property.

History: En. Sec. 4, Ch. 425, L. 1985; amd. Sec. 31, Ch. 584, L. 1999.

CHAPTER 16 CULTURE, SOCIAL SERVICES, AND RECREATION

Part 41 General Provisions Affecting Municipal Government

7-16-4107. Use of park funds for public recreation. (1) Any city or town, including any board of park commissioners, may expend funds from the band fund and the park fund of the city or town for the purpose of operating a program of public recreation and playgrounds and for this purpose may acquire, equip, and maintain land, buildings, and other recreation facilities.

(2) Any school district may cooperate in such program.

History: En. Sec. 1, Ch. 71, L. 1939; R.C.M. 1947, 62-211; amd. Sec. 29, Ch. 253, L. 1979.

7-16-4108. Operation of public recreation programs. (1) Any city, town, or school district or any board thereof, including any board of park commissioners, may operate such a program independently or may cooperate in its operation and conduct with any other body authorized hereby to conduct such a program in any manner upon which they may mutually agree, or it or they may delegate the operation of the program to a board of recreation created by any city, town, or school district or any board thereof, including any board of park commissioners, operating or proposing to operate a program independently or with any cooperating bodies in such manner as they may agree, and all money appropriated for the purposes of such program may be expended by such board.

(2) Any corporation, board, or body designated in this section, given authority to operate and conduct a recreation program or given charge of such program, is authorized to employ directors and instructors of said recreational work and to conduct its activities on:

- (a) property under its custody and management;
- (b) other public property under the custody of any other public corporation, body, or board, with the consent of such corporation, body, or board; and
- (c) private property, with the consent of its owners.

History: (1) En. Sec. 2, Ch. 71, L. 1939; Sec. 62-212, R.C.M. 1947; (2) En. Sec. 3, Ch. 71, L. 1939; Sec. 62-213, R.C.M. 1947; R.C.M. 1947, 62-212, 62-213(part).

TITLE 10 MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES

CHAPTER 1 MILITIA

Part 10 Montana Military Service Employment Rights

10-1-1001. Short title. This part may be cited as the “Montana Military Service Employment Rights Act”.

History: En. Sec. 1, Ch. 381, L. 2005.

10-1-1002. Purpose — legislative intent. The purpose of this part is to recognize the importance of the service performed by Montana national guard members and to protect the employment rights of national guard members who may be called to state active duty when there is a state emergency or disaster. The legislature also supports the efforts and sacrifices of the employers of Montana national guard members and intends that this part will provide a means for national guard members and employers to work cooperatively to resolve any workplace issues.

History: En. Sec. 2, Ch. 381, L. 2005.

10-1-1003. Definitions. Unless the context requires otherwise, as used in this part, the following definitions apply:

(1) “Department” means the department of labor and industry established in 2-15-1701.

(2) “Elected official” means an official duly elected or appointed to any state or local judicial, legislative, or executive elective office of the state, a district, or a political subdivision of the state, including a school district or any other local district.

(3) (a) “Employer” means any public or private person or entity providing employment in Montana.

(b) The term does not include the United States.

(4) “Federally funded military duty” means duty, including training, performed pursuant to orders issued under Title 10 or 32 of the United States Code and the time period, if any, required pursuant to a licensed physician’s certification to recover from an illness or injury incurred while performing the duty.

(5) “Member” means a member of the state’s organized militia provided for in 10-1-103.

(6) “Military service” includes both federally funded military duty and state active duty.

(7) (a) “State active duty” means duty performed by a member when a disaster or an emergency has been declared by the proper authority of the state pursuant to Article VI, section 13, of the Montana constitution to include the time period, if any, required pursuant to a licensed physician’s certification to recover from an illness or injury incurred while performing the active duty.

(b) The term does not include federally funded military duty.

History: En. Sec. 3, Ch. 381, L. 2005.

10-1-1004. Rights under federal law. A person ordered to federally funded military duty is entitled to all of the employment and reemployment rights and benefits provided pursuant to the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301, et seq., and other applicable federal law.

History: En. Sec. 4, Ch. 381, L. 2005.

10-1-1005. Prohibition against employment discrimination. An employer may not deny employment, reemployment, reinstatement, retention, promotion, or any benefit of employment or obstruct, injure, discriminate against, or threaten negative consequences against a person with regard to employment because of the person’s membership, application for membership, or potential application for membership in the state organized militia or because the person may exercise or has exercised a right or may claim or has claimed a benefit under this part.

History: En. Sec. 5, Ch. 381, L. 2005.

10-1-1006. Entitlement to leave of absence. (1) A member ordered to state active duty is entitled to a leave of absence from the person’s employment during the period of that state active duty.

(2) A leave of absence for state active duty may not be deducted from any sick leave, vacation leave, military leave, or other leave accrued by the member unless the member desires the deduction.

History: En. Sec. 6, Ch. 381, L. 2005.

10-1-1007. Right to return to employment without loss of benefits — exceptions — definition. (1) Subject to the provisions of this section, after a leave of absence for state active duty, a member is entitled to return to employment with the same seniority, status, pay, health insurance, pension, and other benefits as the member would have accrued if the member had not been absent for the state active duty.

(2) (a) If a member was a probationary employee when ordered to state active duty, the employer may require the member to resume the member's probationary period from the date when the member's leave of absence for state active duty began.

(b) An employer may decide whether or not to authorize the member to accrue sick leave, vacation leave, military leave, or other leave benefits during the member's leave of absence for state active duty. However, the member may not be provided with lesser leave accrual benefits than are provided to all other employees of the employer in a similar but nonmilitary leave status.

(c) (i) An employer's health plan must provide that:

(A) a member may elect to not remain covered under the employer's health plan while the member is on state active duty but that when the member returns, the member may resume coverage under the plan without the plan considering the employee to have incurred a break in service; and

(B) a member may elect to remain on the employer's health plan while the member is on state active duty without being required to pay more than the regular employee share of the premium, except as provided in subsection (2)(c)(ii).

(ii) If a member's state active duty qualifies the member for coverage under the state of Montana's health insurance plan as an employee of the department of military affairs, the employer's health plan may require the member to pay up to 102% of the full premium for continued coverage.

(iii) A health insurance plan covering an employee who is a member serving on state active duty is not required to cover any illness or injury caused or aggravated by state active duty.

(iv) If the member is a state employee prior to being ordered to state active duty, the member does not become qualified as an employee of the department of military affairs for the purposes of health plan coverage until the member's state active duty qualifies the member to be considered an employee of the department of military affairs pursuant to 2-18-701.

(d) An employer's pension plan must provide that when a member returns to employment from state active duty:

(i) the member's period of state active duty may constitute service with the employer or employers maintaining the plan for the purposes of determining the nonforfeitability of the member's accrued benefits and for the purposes of determining the accrual of benefits under the plan; and

(ii) if the member elects to receive credit and makes the contributions required to accrue the pension benefits that the member would have accrued if the member had not been absent for the state active duty, then the employer shall pay the amount of the employer contribution that would have been made for the member if the member had not been absent.

(e) An employer is not obligated to allow the member to return to employment after the member's absence for state active duty if:

(i) the member is no longer qualified to perform the duties of the position, subject to the provisions of 49-2-303 prohibiting employment discrimination because of a physical or mental disability;

(ii) the member's position was temporary and the temporary employment period has expired;

(iii) the member's request to return to employment was not done in a timely manner;

(iv) the employer's circumstances have changed so significantly that the member's continued employment with the employer cannot reasonably be expected; or

(v) the member's return to employment would cause the employer an undue hardship.

(3) (a) For the purposes of this section and except as provided in subsection (3)(b), "timely manner" means:

(i) for state active duty of up to 30 days, the member returned to employment the next regular work shift following safe travel time plus 8 hours;

(ii) for state active duty of 30 days to 180 days, the member returned to employment within 14 days of termination of state active duty; and

(iii) for state active duty of more than 180 days, the member returned to employment within 90 days of termination of the state active duty.

(b) If there are extenuating circumstances that preclude the member from returning to employment within the time period provided in subsection (3)(a) through no fault of the member, then for the purposes of this section “timely manner” means within the time period specified by the adjutant general provided for in 2-15-1202.

History: En. Sec. 7, Ch. 381, L. 2005.

10-1-1008. Leave of absence for elected officials — restoration to office. (1) If an elected official is ordered to military service, the official is entitled to a leave of absence for the duration of the military service.

(2) An elected official’s leave of absence pursuant to this section does not create a vacancy in office or require the official to forfeit the office.

(3) If an acting official is appointed pursuant to 10-1-1010, the leave of absence must be without pay.

(4) An elected official ordered to military service is entitled to the employment rights and benefits that would be provided to any other employee under the official’s employer if the employee were on a leave of absence subject to the provisions of this part.

(5) Upon returning from a leave of absence for military service, if an acting official was appointed pursuant to 10-1-1010, the returning elected official is entitled to be restored to office for the official’s unexpired term immediately upon the official’s request after being released from the military service.

History: En. Sec. 8, Ch. 381, L. 2005.

10-1-1009. Paid military leave for public employees. (1) A state, city, town, or county employee who is a member of the organized militia of this state or who is a member of the organized or unorganized reserve corps or military forces of the United States and who has been an employee for a period of at least 6 months must be given leave of absence with pay accruing at a rate of 15 working days in a calendar year for performing military service.

(2) Military leave may not be charged against the employee’s annual vacation time.

(3) Unused military leave must be carried over to the next calendar year, but may not exceed a total of 30 days in any calendar year.

History: En. 77-2104 by Sec. 61, Ch. 94, L. 1974; R.C.M. 1947, 77-2104; amd. Sec. 1, Ch. 80, L. 1991; amd. Sec. 22, Ch. 381, L. 2005; Sec. 10-1-604, MCA 2003; redes. 10-1-1009 by Sec. 28, Ch. 381, L. 2005.

10-1-1010. Appointment of acting officials. (1) When an elected official is ordered to military service, an acting official must be appointed as provided in this section if:

(a) the elected official is precluded pursuant to federal law from performing the official duties of the office; or

(b) the elected official requests the appointment of an acting official.

(2) If an acting official is appointed, the acting official shall take any oath of office required to assume the office, shall exercise all the rights, powers, and duties vested in the office, and must be provided with all the employment rights and benefits associated with the position until the elected official is restored to office pursuant to 10-1-1008(5) or the elected official’s term expires, whichever occurs first.

(3) (a) The governor shall appoint the acting official for any office elected by the state at large and for the office of district judge, public service commissioner, or any other elected regional or district office of the state.

(b) An acting official for a legislative district must be appointed using the procedures in 5-2-402.

(c) The board of county commissioners shall appoint the acting official for any elected office of a county.

(d) The city or town council shall appoint the acting official for any elected office of a city or town.

(4) For any elected office not covered under subsection (3), the governing body shall determine the method by which an acting official may be appointed pursuant to this section.

(5) An appointment of an acting official pursuant to this section must be made for a period not to exceed the unexpired term for the office and subject to the right of the elected official to be restored to the office upon returning from the military service, as provided in 10-1-1008(5).

History: En. Sec. 9, Ch. 381, L. 2005.

10-1-1011 through 10-1-1014 reserved.

10-1-1015. Procedure for filing complaint. (1) A person entitled to rights or benefits under this part and who claims that an employer has failed or is about to fail to comply with the provisions of this part may file a complaint with the department as provided in this section.

(2) A complaint under this section must be:

(a) filed within 15 days after the member discovered the actions or practice alleged to constitute an employer's failure or imminent failure to comply with the provisions of this part; and

(b) submitted in writing to the department in a manner prescribed by the department.

(3) The department shall, upon request, provide technical assistance to a person wishing to file a complaint pursuant to this section.

History: En. Sec. 10, Ch. 381, L. 2005.

10-1-1016. Assistance, investigation, and enforcement of complaints. (1) The department shall provide assistance to any person with respect to the employment rights and benefits to which the person is entitled pursuant to this part. The department may request the assistance of federal or state agencies engaged in similar or related activities and utilize the assistance of volunteers.

(2) The department shall investigate each complaint submitted pursuant to 10-1-1015. The department shall initiate the investigation within 30 days of receiving the complaint. Within 60 days of receiving the complaint, the department shall make a finding about whether a violation of rights or benefits provided in this part has occurred or is about to occur and shall notify the complainant and the employer in writing of the finding.

(3) If the department's investigation finds that a violation of this part has occurred or is about to occur, the department shall attempt to resolve the matter by making a reasonable effort, including conference, conciliation, and persuasion, to provide redress to the complainant and ensure that the employer named in the complaint complies with the provisions of this part.

(4) If the department fails to resolve the matter within 90 days of receiving the complaint, the department shall notify the complainant of the complainant's right to request that the department refer the complaint to the state attorney general under the provisions of 10-1-1018.

History: En. Sec. 11, Ch. 381, L. 2005.

10-1-1017. Enforcement and investigative powers of department. To carry out its enforcement and investigative duties under this part, the department has the power to:

(1) enter and inspect the places, question the employees, and investigate the facts, conditions, or matters that the department considers appropriate to determine whether an employer has violated or is about to violate the provisions of this part or that will aid the department in the enforcement of the provisions of this part; and

(2) administer oaths, examine witnesses, issue subpoenas, compel the attendance of witnesses, inspect papers, books, accounts, records, payrolls, documents, and testimony, and take depositions and affidavits relevant to the department's duties under this part.

History: En. Sec. 12, Ch. 381, L. 2005.

10-1-1018. Referral of complaint to state attorney general. (1) A complaint that could not be successfully resolved pursuant to 10-1-1016 must be referred by the department to the state attorney general if the complainant requests the referral pursuant to 10-1-1016(4).

(2) (a) Except as provided in subsection (2)(b), if the state attorney general is satisfied that the complaint has merit, the state attorney general may file a lawsuit on behalf of and act as an attorney for the complainant in seeking relief for the complainant.

(b) (i) Except as provided in subsection (2)(b)(ii), if the complaint is against a state agency, as defined in 2-15-102, notwithstanding an arrangement for the provision of legal services to the agency by the department of justice, the agency shall provide or obtain counsel for the agency.

(ii) If the complaint is against the department of justice, the department of administration, notwithstanding an arrangement for the provision of legal services to the department of administration by the department of justice, shall provide or obtain counsel for the department of justice.

(3) If the state attorney general sues pursuant to this section, fees or court costs may not be assessed against the complainant.

History: En. Sec. 13, Ch. 381, L. 2005.

10-1-1019. Independent lawsuit not precluded — exhaustion of administrative remedies. Nothing in this part may be construed as infringing on a person's right to file an independent lawsuit to seek relief as a private party from an alleged violation of this part. However, if a person files a complaint with the department as provided in 10-1-1015, the person must have exhausted the administrative remedies available under 10-1-1016 before having standing to initiate an independent lawsuit.

History: En. Sec. 14, Ch. 381, L. 2005.

10-1-1020. Jurisdiction — venue — standing — respondent — time limit — expedited hearing. In any lawsuit initiated pursuant to this part:

(1) the lawsuit must be brought in the district court in the county in which the claimant's employer maintains a place of business;

(2) the lawsuit may be initiated only by a person claiming a right or benefit under this part or by the state attorney general as provided in 10-1-1018;

(3) only an employer may be a necessary party respondent;

(4) the lawsuit must be commenced within 3 years of when the claimant can reasonably be expected to have discovered the facts constituting a violation of the claimant's rights or benefits pursuant to this part; and

(5) the court shall order a speedy hearing and shall advance the case on the court's calendar.

History: En. Sec. 15, Ch. 381, L. 2005.

10-1-1021. Court remedies. (1) In a lawsuit initiated pursuant to this part, the court may provide one or more of the following remedies:

(a) require the employer to comply with the provisions of this part;

(b) require the employer to compensate the complainant for losses suffered by the complainant because of the employer's violation; or

(c) if the court finds that the employer's violation was done willfully, as defined in 1-1-204, require the employer to pay compensation under subsection (1)(b) as liquidated damages.

(2) If the complainant is the prevailing party, the court may award reasonable attorney fees to the complainant.

(3) The court may use its full equity powers, including temporary or permanent injunctions, temporary restraining orders, and contempt orders, to vindicate fully the rights or benefits of a person under this part.

History: En. Sec. 16, Ch. 381, L. 2005.

10-1-1022. Special revenue account for payment to claimants. (1) There is an account in the state special revenue fund to the credit of the department of justice for the payment of compensation awarded by a court pursuant to 10-1-1021.

(2) In a lawsuit by the state attorney general under 10-1-1018, if paid compensation or liquidated damages are awarded, the money awarded must be deposited in the state special revenue account and be paid from the account directly to the complainant on order of the state attorney general.

(3) If payment cannot be made to a complainant within 3 years, the payment must be forwarded to the Montana department of revenue and classified as unclaimed property subject to the provisions of Title 70, chapter 9, part 8.

History: En. Sec. 17, Ch. 381, L. 2005.

10-1-1023 through 10-1-1026 reserved.

10-1-1027. Rulemaking authority. The department and the department of justice may adopt rules to implement the provisions of this part.

History: En. Sec. 18, Ch. 381, L. 2005.

TITLE 13

ELECTIONS

CHAPTER 1

GENERAL PROVISIONS

Part 1

General Provisions

13-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Active elector” means an elector who voted in the previous federal general election and whose name is on the active list.

(2) “Active list” means a list of active electors maintained pursuant to 13-2-220.

(3) “Anything of value” means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(4) “Application for voter registration” means a voter registration form prescribed by the secretary of state that is completed and signed by an elector, submitted to the election administrator, and contains voter registration information subject to verification as provided by law.

(5) “Ballot” means a paper ballot counted manually or a paper ballot counted by a machine, such as an optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots.

(6) “Candidate” means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law;

(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual’s behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; and

(c) an officeholder who is the subject of a recall election.

(7) (a) “Contribution” means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) “Contribution” does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees; or

(iv) filing fees paid by the candidate.

(8) “Election” means a general, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(9) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections, the term means the school district clerk.

(10) "Elector" means an individual qualified to vote under state law.

(11) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (7);

(ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees.

(12) "Federal election" means a general or primary election in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

(13) "General election" or "regular election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at a regular election, regular election means an election held at the time provided in 13-1-104(1).

(14) "Inactive elector" means an individual who failed to vote in the preceding federal general election and whose name was placed on an inactive list pursuant to 13-2-220.

(15) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220.

(16) "Individual" means a human being.

(17) (a) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question.

(b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by the secretary of state of the form of the petition or referral to the person who submitted the proposed issue.

(18) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

(19) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (6).

(20) "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

(21) “Political subdivision” means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

(22) “Primary” or “primary election” means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for nominations is set on the same date for all similar subdivisions in the state.

(23) “Provisional ballot” means a ballot cast by an elector whose identity and eligibility to vote have not been verified as provided by law.

(24) “Provisionally registered elector” means an individual whose application for voter registration was accepted but whose eligibility has not yet been verified as provided by law.

(25) “Public office” means a state, county, municipal, school, or other district office that is filled by the people at an election.

(26) “Registrar” means the county election administrator and any regularly appointed deputy or assistant election administrator.

(27) “Special election” means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

(28) “Statewide voter registration list” means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.

(29) “Transfer form” means a form prescribed by the secretary of state that may be filled out by an elector to transfer the elector’s registration when the elector’s residence address has changed within the county.

(30) “Valid vote” means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

(31) “Voting system” or “system” means any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a paper ballot.

History: Ap. p. Sec. 1, Ch. 368, L. 1969; amd. Sec. 1, Ch. 365, L. 1977; Sec. 23-2601, R.C.M. 1947; Ap. p. Sec. 2, Ch. 480, L. 1975; amd. Sec. 2, Ch. 365, L. 1977; Sec. 23-4777, R.C.M. 1947; R.C.M. 1947, 23-2601, 23-4777; amd. Sec. 1, Ch. 571, L. 1979; amd. Sec. 1, Ch. 603, L. 1983; amd. Sec. 31, Ch. 370, L. 1987; amd. Sec. 1, Ch. 339, L. 1989; amd. Sec. 1, Ch. 390, L. 1993; amd. Sec. 2, Ch. 246, L. 1997; amd. Sec. 1, Ch. 208, L. 1999; amd. Sec. 1, Ch. 401, L. 2001; amd. Secs. 5, 93(1), Ch. 414, L. 2003; amd. Sec. 1, Ch. 475, L. 2003; amd. Sec. 1, Ch. 273, L. 2007; amd. Sec. 3, Ch. 481, L. 2007.

Compiler’s Comments

2007 Amendments — Composite Section: Chapter 273 in definition of ballot substituted “counted manually or a paper ballot counted by a machine” for “used with a paper-based system” and deleted former (b) that read: “(b) a nonpaper ballot, such as a ballot used with a nonpaper-based system, such as a lever machine, a direct recording electronic machine, or other technology”; in definition of voting system near end after “paper” deleted “or nonpaper”; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 481 in definition of issue or ballot issue in (b) near middle after “upon” substituted “preparation and transmission” for “approval” and at end after “referral” inserted “to the person who submitted the proposed issue”; and made minor changes in style. Amendment effective May 11, 2007.

13-1-102. Elections by secret ballot. All elections shall be by secret ballot.

History: En. Sec. 2, Ch. 368, L. 1969; amd. Sec. 1, Ch. 8, L. 1973; R.C.M. 1947, 23-2602.

13-1-103. Determination of winner. The individual receiving the highest number of valid votes for any office at an election is elected or nominated to that office.

History: En. Sec. 3, Ch. 368, L. 1969; R.C.M. 1947, 23-2603; amd. Sec. 2, Ch. 571, L. 1979; amd. Sec. 6, Ch. 414, L. 2003.

13-1-104. Times for holding general elections. (1) (a) Except as provided in subsection (1)(b), a general election must be held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November to vote on ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election and to elect federal officers, state or multicounty district officers, members of the legislature, judges of the district court, and county officers when the terms of the offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(b) A special election may be held on an earlier date provided in a law authorizing a special statewide election on an initiative or referendum pursuant to Article III, section 6, of the Montana constitution.

(2) A general election must be held throughout the state in every odd-numbered year on the first Tuesday after the first Monday in November to elect municipal officers, officers of political subdivisions wholly within one county and not required to hold annual elections, and any other officers specified by law for election in odd-numbered years when the term for the offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(3) The general election for any political subdivision, other than a municipality, required to hold elections annually must be held on school election day, the first Tuesday after the first Monday of May of each year, and is subject to the election procedures provided for in 13-1-401.

(4) The general election for a municipality required to hold elections annually may be held either on school election day, as provided in subsection (3), or on the first Tuesday after the first Monday in November, at the discretion of the governing body.

History: En. Sec. 4, Ch. 368, L. 1969; R.C.M. 1947, 23-2604; amd. Sec. 4, Ch. 571, L. 1979; amd. Sec. 5, Ch. 27, L. 1981; amd. Sec. 2, Ch. 603, L. 1983; amd. Sec. 2, Ch. 216, L. 1987; amd. Sec. 1, Ch. 644, L. 1987; amd. Sec. 1, Ch. 514, L. 1999; amd. Sec. 2, Ch. 475, L. 2003.

13-1-105. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 56, Ch. 368, L. 1969; R.C.M. 1947, 23-3301.

13-1-106. Time of opening and closing of polls for all elections — exceptions. (1) Except as provided in subsections (2) and (3), polling places must be open from 7 a.m. to 8 p.m.

(2) A polling place having fewer than 400 registered electors must be open from noon to 8 p.m. or until all registered electors in any precinct have voted, at which time the polling place must be closed immediately.

(3) If an election held under 13-1-104(3) and a school election are conducted in the same polling place, the polling place must be opened and closed at the times set for the school election, as provided in 20-20-106.

History: En. Sec. 5, Ch. 368, L. 1969; amd. Sec. 4, Ch. 365, L. 1977; R.C.M. 1947, 23-2605; amd. Sec. 5, Ch. 571, L. 1979; amd. Sec. 1, Ch. 676, L. 1983; amd. Sec. 1, Ch. 57, L. 1985; amd. Sec. 1, Ch. 360, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 360 in (1) at beginning inserted exception clause; in (2) substituted "400" for "200"; and made minor changes in style. Amendment effective October 1, 2007.

13-1-107. Times for holding primary elections. (1) On the first Tuesday after the first Monday in June preceding the general election provided for in 13-1-104(1), a primary election shall be held throughout the state.

(2) On the Tuesday following the second Monday in September preceding the general election provided for in 13-1-104(2), a primary election, if required, shall be held throughout the state.

(3) If the general election for a municipality required to hold annual elections is held in November, as provided in 13-1-104(4), a primary election, if required, shall be held on the Tuesday following the second Monday in September. In an even-numbered year, the cost of this election must be paid by the municipality.

History: En. Sec. 3, Ch. 571, L. 1979; amd. Sec. 3, Ch. 216, L. 1987.

13-1-108. Notice of special elections. Notice of any special election must be published at least three times in the 4 weeks immediately preceding the close of registration on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the jurisdiction where the election will be held. The provisions of this section are fulfilled upon the third publication.

History: En. Sec. 6, Ch. 571, L. 1979; amd. Sec. 2, Ch. 273, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 273 in first sentence substituted "three times in the 4 weeks immediately preceding the close of registration" for "once a week for the 3 successive weeks before the election" and inserted last sentence relating to the third publication; and made minor changes in style. Amendment effective October 1, 2007.

13-1-109. Election records open to public. Unless specifically provided otherwise, all records pertaining to elector registration and elections are public records. They shall be open for inspection during regular office hours.

History: En. Sec. 15, Ch. 571, L. 1979.

13-1-110 reserved.

13-1-111. Qualifications of voter. (1) A person may not vote at elections unless the person is:

- (a) registered as required by law;
 - (b) 18 years of age or older;
 - (c) a resident of the state of Montana and of the county in which the person offers to vote for at least 30 days, except as provided in 13-2-514; and
 - (d) a citizen of the United States.
- (2) A person convicted of a felony does not have the right to vote while the person is serving a sentence in a penal institution.

(3) A person adjudicated to be of unsound mind does not have the right to vote unless the person has been restored to capacity as provided by law.

History: En. Sec. 6, Ch. 368, L. 1969; amd. Sec. 1, Ch. 120, L. 1971; amd. Sec. 2, Ch. 158, L. 1971; amd. Sec. 1, Ch. 40, L. 1973; R.C.M. 1947, 23-2701; amd. Sec. 3, Ch. 273, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 273 at end of (1)(c) inserted exception clause; and made minor changes in style. Amendment effective October 1, 2007.

13-1-112. Rules for determining residence. For registration, voting, or seeking election to the legislature, the residence of an individual must be determined by the following rules as far as they are applicable:

(1) The residence of an individual is where the individual's habitation is fixed and to which, whenever the individual is absent, the individual has the intention of returning.

(2) An individual may not gain or lose a residence while kept involuntarily at any public institution, not necessarily at public expense; as a result of being confined in any prison; or solely as a result of residing on a military reservation.

(3) (a) An individual in the armed forces of the United States may not become a resident solely as a result of being stationed at a military facility in the state.

(b) An individual may not acquire a residence solely as a result of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(c) A member of a reserve component of the United States armed forces who is stationed outside of the state but who has no intent of changing residency retains resident status.

(4) An individual does not lose residence if the individual goes into another state or other district of this state for temporary purposes with the intention of returning, unless the individual exercises the election franchise in the other state or district.

(5) An individual may not gain a residence in a county if the individual comes in for temporary purposes without the intention of making that county the individual's home.

(6) If an individual moves to another state with the intention of making it the individual's residence, the individual loses residence in this state.

(7) The place where an individual's family resides is presumed to be that individual's place of residence. However, an individual who takes up or continues a residence at a place other than where the individual's family resides with the intention of remaining is a resident of the place where the individual resides.

(8) A change of residence may be made only by the act of removal joined with intent to remain in another place.

History: En. Sec. 41, Ch. 368, L. 1969; amd. Sec. 1, Ch. 394, L. 1971; amd. Sec. 1, Ch. 164, L. 1975; amd. Sec. 1, Ch. 177, L. 1975; R.C.M. 1947, 23-3022(part); amd. Sec. 7, Ch. 571, L. 1979; amd. Sec. 1, Ch. 74, L. 1993; amd. Sec. 15, Ch. 51, L. 1999; amd. Sec. 3, Ch. 271, L. 2003.

13-1-113. Only one residence. There can be only one residence.

History: En. Sec. 41, Ch. 368, L. 1969; amd. Sec. 1, Ch. 394, L. 1971; amd. Sec. 1, Ch. 164, L. 1975; amd. Sec. 1, Ch. 177, L. 1975; R.C.M. 1947, 23-3022(part); amd. Sec. 8, Ch. 571, L. 1979.

13-1-114. Computation of elector's age and term of residence. An elector's age and the term of his residence must be computed by including the day of election.

History: En. Sec. 41, Ch. 368, L. 1969; amd. Sec. 1, Ch. 394, L. 1971; amd. Sec. 1, Ch. 164, L. 1975; amd. Sec. 1, Ch. 177, L. 1975; R.C.M. 1947, 23-3022(10); amd. Sec. 9, Ch. 571, L. 1979.

13-1-115. Privilege from arrest. Electors are privileged from arrest during their attendance at elections and in going to and from voting places, except in cases of treason, felony, or breach of the peace.

History: En. Sec. 10, Ch. 368, L. 1969; R.C.M. 1947, 23-2705.

13-1-116. Fingerprint, mark, or agent for disabled electors — rulemaking. (1) Except as otherwise specified by law, the provisions of this section apply.

(2) Whenever a signature is required by an elector under a provision of this title and the elector is unable because of a disability to provide a signature, the elector may provide a fingerprint, subject to subsection (6), or an identifying mark or may request that an agent, election administrator, or election judge sign for the elector as provided in this section.

(3) If an elector is unable to provide a fingerprint or an identifying mark and the elector has not established an agent pursuant to subsection (4), the election administrator or an election judge may sign for the elector after reviewing and verifying the elector's identification.

(4) (a) An elector who is unable to provide a signature may apply to the election administrator to have another person designated as an agent for purposes of providing a signature or identifying mark required pursuant to this title and for delivering the disabled elector's absentee ballot application to the county election administrator as provided in 13-13-213.

(b) An application for designation of an agent by an elector under this section must be made on a form prescribed by the secretary of state. The secretary of state shall by rule establish the criteria that must be met and the process that must be followed in order for a person to become a designated agent for a disabled elector pursuant to this subsection (4).

(5) If an agent, election administrator, or election judge signs or marks a document for an elector pursuant to this section, the agent, election administrator, or election judge shall initial the signature or mark.

(6) A disabled elector may not be required to provide a fingerprint.

History: En. Sec. 1, Ch. 367, L. 2005.

13-1-117 through 13-1-120 reserved.

13-1-121. Question of holding constitutional convention. Unless otherwise submitted earlier, the secretary of state shall cause the question of holding an unlimited constitutional convention to be submitted to the people at the general election in 1990. The same question shall be submitted at the general election in each 20th year following its last submission, unless otherwise submitted earlier.

History: En. Sec. 1, Ch. 36, L. 1973; R.C.M. 1947, 23-4801.

13-1-122. Ballot form and content. The ballot submitting the question to the people shall contain the following:

Article XIV, sections 3 and 4, of the Montana constitution requires the question of holding an unlimited constitutional convention to be submitted to the people at the general election in each 20th year following its last submission. If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session.

☐ FOR calling a constitutional convention

☐ AGAINST calling a constitutional convention

History: En. Sec. 2, Ch. 36, L. 1973; R.C.M. 1947, 23-4802; amd. Sec. 10, Ch. 571, L. 1979.

Part 2 Role of Secretary of State

13-1-201. Chief election officer. The secretary of state is the chief election officer of this state, and it is his responsibility to obtain and maintain uniformity in the application, operation, and interpretation of the election laws other than those in chapters 35, 36, or 37 of this title.

History: En. Sec. 11, Ch. 571, L. 1979.

13-1-202. Forms and rules prescribed by secretary of state — consultation. (1) In carrying out the responsibilities under 13-1-201, the secretary of state shall prepare and deliver to the election administrators:

- (a) written directives and instructions relating to and based on the election laws;
- (b) sample copies of prescribed and suggested forms; and
- (c) advisory opinions on the effect of election laws other than those laws in chapter 35, 36, or 37 of this title.

(2) The secretary of state may prescribe the design of any election form required by law. The secretary of state shall seek the advice of election administrators and printers in designing the required forms.

(3) Each election administrator shall comply with the directives and instructions and shall provide election forms prepared as prescribed.

(4) Each election administrator shall provide data to the secretary of state that the secretary of state determines is necessary to:

- (a) evaluate voting system performance against the benchmark standard adopted pursuant to 13-17-103;
- (b) evaluate the security, accuracy, and accessibility of elections; and
- (c) assist the secretary of state in making recommendations to improve voter confidence in the integrity of the election process.

(5) The secretary of state shall regularly consult with and seek the advice of local election administrators in implementing the provisions of this section.

History: En. Sec. 12, Ch. 571, L. 1979; amd. Sec. 7, Ch. 414, L. 2003; amd. Sec. 8, Ch. 44, L. 2007; amd. Sec. 4, Ch. 273, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 44 in (4)(a) at end substituted “13-17-103(3)” for “13-17-103(2)”. Amendment effective October 1, 2007. This amendment was rendered void by the Ch. 273 amendment.

Chapter 273 at end of (4)(a) after “13-17-103” deleted “(2)”. Amendment effective October 1, 2007.

13-1-203. Secretary of state to advise, assist, and train. (1) The secretary of state shall advise and assist election administrators, including administrators of school elections under Title 20, chapter 20, with regard to:

- (a) the application, operation, and interpretation of Title 13, except for chapter 35, 36, or 37;
- (b) the implementation and operation of the National Voter Registration Act of 1993, Public Law 103-31; and
- (c) the procedures adopted pursuant to 13-17-211.

(2) The secretary of state shall prepare and distribute training materials for election judges to be trained pursuant to 13-4-203. Sufficient copies of the materials to supply all election judges in the county and to provide a small extra supply must be sent to each election administrator.

(3) The secretary of state shall hold at least one workshop every 2 years to instruct election administrators and their staffs in use of the materials. Workshops may be held in various locations around the state. Costs of the materials and workshops must be paid by the secretary of state. Attendees of the training must receive a certificate of instruction, which is valid for 2 years.

History: En. Sec. 13, Ch. 571, L. 1979; amd. Sec. 32, Ch. 370, L. 1987; amd. Sec. 1, Ch. 4, Sp. L. November 1993; amd. Sec. 3, Ch. 246, L. 1997; amd. Sec. 8, Ch. 414, L. 2003.

13-1-204. Election records to be kept by secretary of state. (1) The secretary of state shall maintain current and accurate records including:

- (a) a list of all precincts in each county;
- (b) a map showing the boundaries of all precincts in each county;
- (c) a count of the number of registered voters in each precinct for the latest general election;
- (d) a list of legislative districts, judicial districts, and any multicounty election districts, showing the precinct numbers of each county contained in each district and the number of registered voters in each district for the most recent general election;
- (e) a count of votes cast at the most recent general election by precinct and by legislative, judicial, and multicounty districts; and

(f) records required to be submitted from local election administrators and other agencies and coordinated by the secretary of state pursuant to the National Voter Registration Act of 1993, Public Law 103-31.

(2) Each election administrator shall provide the information and map for the record required in subsection (1) in the form and at the time prescribed by the secretary of state.

(3) The records required in subsection (1) and all records in the secretary of state's office pertaining to elections must be open for public inspection during normal office hours.

History: En. Sec. 18, Ch. 571, L. 1979; amd. Sec. 1, Ch. 70, L. 1983; amd. Sec. 4, Ch. 246, L. 1997.

13-1-205 through 13-1-208 reserved.

13-1-209. Special account for federal Help America Vote Act. (1) There is a federal special revenue account in the state treasury to the credit of the office of the secretary of state.

(2) Money provided to the state for the purposes of implementing provisions of Public Law 107-252, the Help America Vote Act of 2002, must be deposited in the account.

(3) Money in the account may be used only for the purposes specified by the federal law under which the money was provided.

History: En. Sec. 1, Ch. 218, L. 2003.

Part 3

Local Election Administration

13-1-301. Election administrator. (1) The county clerk and recorder of each county is the election administrator unless the governing body of the county designates another official or appoints an election administrator.

(2) The election administrator is responsible for the administration of all procedures relating to registration of electors and conduct of elections, shall keep all county records relating to elector registration and elections, and is the primary point of contact for the county with respect to the statewide voter registration list and implementation of other provisions of applicable federal law governing elections.

(3) The election administrator may appoint a deputy election administrator for each political subdivision required to hold annual elections under the provisions of 13-1-104(3). Each election administrator or deputy election administrator is responsible for the conduct of the annual elections of the political subdivision, as provided by 13-1-401.

History: En. Sec. 14, Ch. 571, L. 1979; amd. Sec. 6, Ch. 27, L. 1981; amd. Sec. 3, Ch. 475, L. 2003.

13-1-302. Election costs. (1) Unless specifically provided otherwise, all costs of the regularly scheduled primary and general elections shall be paid by the counties and other political subdivisions for which the elections are held. Each political subdivision shall bear its proportionate share of the costs as determined by the county governing body.

(2) A political subdivision holding an annual election with a regularly scheduled school election shall bear its proportionate share of the costs as determined by the county election administrator and the school district election administrator.

(3) The political subdivision for which a special election is held shall bear all costs of the election, or its proportionate share as determined by the county governing body if held in conjunction with any other election.

(4) Costs of elections may not include the services of the election administrator or capital expenditures.

(5) The county governing body shall set a schedule of fees for services provided to school districts by the election administrator.

(6) Election costs shall be paid from county funds, and any shares paid by other political subdivisions shall be credited to the fund from which the costs were paid.

(7) The proportionate costs referred to in subsection (1) of this section shall be only those additional costs incurred as a result of the political subdivision holding its election in conjunction with the primary or general election.

History: En. Sec. 16, Ch. 571, L. 1979; amd. Sec. 7, Ch. 27, L. 1981; amd. Sec. 1, Ch. 558, L. 1983; amd. Sec. 2, Ch. 644, L. 1987.

13-1-303. Disposition of ballots and other election materials. (1) The voted ballots, detached stubs, unvoted ballots, and unused ballots from an election must be kept in the

unopened packages received from the election judges for a period of 12 months. The packages may be opened only when an order for opening is given by the proper official for a recount procedure. After 12 months, if there is no contest begun, recount pending, or appeal of a decision relating to a contest or recount, an election administrator may dispose of the ballots as provided in subsection (2).

(2) Each election administrator shall prepare a plan for retention and destruction of election records in the county according to the retention schedules established by the local government records committee provided for in 2-6-402.

History: En. Sec. 17, Ch. 571, L. 1979; amd. Sec. 1, Ch. 97, L. 1997; amd. Sec. 2, Ch. 586, L. 2005.

13-1-304. Duties of officials when election not held. If a scheduled election is not necessary or is canceled for any reason, the governing body or official making the determination shall immediately notify the election administrator in writing. If the election is not necessary because of the number of candidates filed, the election administrator shall make the determination and notify the proper governing body.

History: En. Sec. 25, Ch. 571, L. 1979.

Part 4 Political Subdivision Elections

13-1-401. Manner of conducting general elections for political subdivisions required to hold annual elections. (1) Any political subdivision required to hold annual elections under 13-1-104(3) may cooperate with school districts having similar district boundaries to hold the election at the same location. The election administrator or deputy election administrator appointed under the provisions of 13-1-301 shall cooperate with the school district election administrator to share costs, as provided in 13-1-302.

(2) A political subdivision subject to 13-1-104(3) may, with the consent of the election administrator or deputy election administrator, conduct its annual election at an annual meeting of the political subdivision or at another convenient location within the political subdivision.

(3) A political subdivision election subject to 13-1-104(3) may be conducted by mail ballot as provided in Title 13, chapter 19.

(4) The election administrator or deputy election administrator conducting an election under the provisions of subsection (1), (2), or (3) shall give notice of the election not less than 20 days or more than 40 days before the day of the election by display advertisement at least two times in a newspaper of general circulation within the political subdivision. The election administrator or deputy election administrator may notify the public of the election by additional posting of notices or radio and television announcements.

History: En. Sec. 8, Ch. 27, L. 1981; amd. Sec. 29, Ch. 196, L. 1985.

CHAPTER 2 REGISTRATION OF ELECTORS

Part 1 Registrars

13-2-107. Statewide voter registration database — information-sharing agreements. (1) The secretary of state shall establish, in a uniform and nondiscriminatory manner, a single official, centralized, and interactive computerized statewide voter registration database that meets the requirements of 42 U.S.C. 15483.

(2) (a) The statewide voter registration database must be used as the official list of registered electors for the conduct of all elections subject to this title.

(b) The database must contain the name and registration information of each registered elector.

(c) Each election administrator must be provided with immediate electronic access to the database.

(d) The secretary of state shall provide the technical support required to assist election administrators to enter, maintain, and access information in the statewide voter registration database.

(3) As provided in 42 U.S.C. 15483:

(a) the secretary of state and the attorney general shall enter into an agreement to match information in the statewide voter registration list with information in the motor vehicle licensing database to the extent required to verify voter registration information; and

(b) the attorney general shall enter into an agreement with the United States commissioner of social security for the purpose of verifying voter registration information.

History: En. Sec. 4, Ch. 475, L. 2003.

13-2-108. Rulemaking for statewide voter registration list. (1) The secretary of state shall adopt rules to implement the provisions of 42 U.S.C. 15483 and this chapter.

(2) The rules must include but are not limited to:

(a) a list of maintenance procedures, including new data entry, updates, registration transfers, and other procedures for keeping information current and accurate;

(b) proper maintenance and use of active and inactive lists;

(c) proper maintenance and use of lists for legally registered electors and provisionally registered electors;

(d) procedures and timelines to be used by election administrators when providing the information required in 13-2-123;

(e) technical security of the statewide voter registration database;

(f) information security with respect to keeping from general public distribution driver's license numbers, whole or partial social security numbers, and address information protected from general disclosure pursuant to 13-2-115; and

(g) quality control measures for the system and system users.

(3) The rules adopted by the secretary of state must reflect that an elector who was properly registered prior to January 1, 2003, is considered a legally registered elector.

History: En. Sec. 5, Ch. 475, L. 2003; amd. Sec. 2, Ch. 286, L. 2005.

13-2-109. Rulemaking on sufficiency and verification of voter registration information. (1) The secretary of state shall adopt rules:

(a) to implement the provisions of 13-2-110 and this section concerning how election administrators determine whether the information provided by an elector on an application for voter registration is:

(i) sufficient to be accepted and processed; or

(ii) insufficient to be accepted and processed;

(b) establishing procedures for verifying the accuracy of voter registration information;

(c) establishing standards for determining whether an elector may be legally registered or provisionally registered and the effect of that registration on identification requirements; and

(d) establishing procedures for notifying electors about the status of their applications and registration.

(2) The rules may not conflict with 42 U.S.C. 15301, et seq., or 13-2-208.

History: En. Sec. 6, Ch. 475, L. 2003.

13-2-110. Application for voter registration — sufficiency and verification of information — identifiers assigned for voting purposes. (1) An individual may apply for voter registration in person or by mail by completing and signing an application for voter registration and providing the application to the election administrator in the county in which the elector resides.

(2) An individual applying by mail shall send the application to the election administrator, postage paid, no later than 15 days after the date it is signed.

(3) Each application for voter registration must be accepted and processed as provided in rules adopted under 13-2-109.

(4) Except as provided in subsection (5):

(a) an applicant for voter registration shall provide the applicant's driver's license number;

or

(b) if the applicant does not have a driver's license, the applicant shall provide the last four digits of the applicant's social security number.

(5) If an applicant does not have a driver's license or social security number:

(a) an applicant appearing in person before the election administrator shall provide:

(i) current and valid photo identification, including but not limited to a school district or postsecondary education photo identification or a tribal photo identification, with the individual's name; or

(ii) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.

(b) an applicant applying by mail to register shall also enclose a copy of:

(i) a current and valid photo identification, including but not limited to a school district or postsecondary education photo identification or a tribal photo identification, with the individual's name; or

(ii) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.

(6) (a) If information provided on an application for voter registration is sufficient to be accepted and processed and is verified pursuant to rules adopted under 13-2-109, the election administrator shall register the elector as a legally registered elector.

(b) If information provided on an application for voter registration was sufficient to be accepted but the applicant failed to provide the information required in subsection (4) or (5) or if the information provided was incorrect or insufficient to verify the individual's eligibility to vote, the election administrator shall register the applicant as a provisionally registered elector.

(7) Each applicant for voter registration must be notified of the elector's registration status pursuant to rules adopted under 13-2-109.

(8) The secretary of state shall assign to each elector whose application was accepted a unique identification number for voting purposes and shall establish a statewide uniform method to allow the secretary of state and local election officials to distinguish legally registered electors from provisionally registered electors.

(9) The provisions of this section may not be interpreted to conflict with voter registration accomplished under 13-2-221, 13-21-201, 13-21-203, and 61-5-107 and as provided for in federal law.

History: En. Sec. 7, Ch. 475, L. 2003; amd. Sec. 3, Ch. 286, L. 2005.

13-2-112. Register of electors to be kept. Each election administrator shall keep an official register of electors in the manner he considers most efficient. The original signed registration form for each elector shall be filed alphabetically in a separate file for each precinct. Additional files and records may be established for convenience. The information recorded in the official register of electors and the design of the registration forms shall be prescribed by the secretary of state.

History: En. Sec. 23, Ch. 368, L. 1969; R.C.M. 1947, 23-3004; amd. Sec. 20, Ch. 571, L. 1979.

13-2-115. Certification of statewide voter registration list — local lists to be prepared. (1) Immediately after regular registration is closed under 13-2-301, the secretary of state shall certify the official statewide voter registration list.

(2) Each election administrator shall have printed from the certified statewide voter registration database lists of all registered electors in each precinct in the county. Except as provided in subsections (5) and (6), names of electors must be listed alphabetically, with their residence address or with a mailing address if located where street numbers are not used.

(3) A copy of the list of registered electors in a precinct must be displayed at the precinct's polling place. Extra copies of the lists must be retained by the election administrator and furnished to an elector upon request.

(4) Lists of registered electors need not be printed if the election will not be held.

(5) If a law enforcement officer or reserve officer, as defined in 7-32-201, requests in writing that, for security reasons, the officer's and the officer's spouse's residential address, if the same as the officer's, not be disclosed, the secretary of state or an election administrator may not include the address on any generally available list of registered electors but may list only the electors' names.

(6) (a) Upon the request of an individual, the secretary of state or an election administrator may not include the individual's residential address on any generally available list of registered electors but may list only the elector's name if the individual:

(i) proves to the election administrator, as provided in subsection (6)(b), that the individual, or a minor in the custody of the individual, has been the victim of partner or family member assault, stalking, custodial interference, or other offense involving bodily harm or threat of bodily harm to the individual or minor; or

(ii) proves to the election administrator, as provided in subsection (6)(c), that a temporary restraining order or injunction has been issued by a judge or magistrate to restrain another person's access to the individual or minor.

(b) Proof of the victimization is conclusive upon exhibition to the election administrator of a criminal judgment, information and judgment, or affidavit of a county attorney clearly indicating the conviction and the identity of the victim.

(c) Proof of the issuance of a temporary restraining order or injunction is conclusive upon exhibition to the election administrator of the temporary restraining order or injunction.

History: Ap. p. Sec. 31, Ch. 368, L. 1969; amd. Sec. 5, Ch. 158, L. 1971; amd. Sec. 12, Ch. 100, L. 1973; Sec. 23-3012, R.C.M. 1947; Ap. p. Sec. 42, Ch. 368, L. 1969; amd. Sec. 2, Ch. 243, L. 1971; amd. Sec. 1, Ch. 201, L. 1973; Sec. 23-3023, R.C.M. 1947; R.C.M. 1947, 23-3012(part), 23-3023; amd. Sec. 22, Ch. 571, L. 1979; amd. Sec. 1, Ch. 161, L. 1995; amd. Sec. 1, Ch. 233, L. 1997; amd. Sec. 3, Ch. 309, L. 1997; amd. Sec. 9, Ch. 396, L. 2001; amd. Sec. 8, Ch. 475, L. 2003; amd. Sec. 4, Ch. 286, L. 2005.

13-2-116. Precinct register. (1) Before each election, the election administrator shall prepare from the certified statewide voter registration list a precinct register for each precinct in the county for use by the election judges. The register must contain an alphabetical list of the names, with addresses, of the legally registered electors and provisionally registered electors, a space for the signature of the elector, and other information as prescribed by the secretary of state.

(2) If some of the electors in a precinct are not eligible to receive all ballots at an election because of a combination of the elections of more than one political subdivision, the election administrator shall distinguish the names of those eligible for each ballot by whatever method will be clear and efficient.

(3) When several precincts have been combined at one polling place for an election, the election administrator may combine the electors from all precincts into one register or may provide separate registers for each precinct.

(4) Precinct registers need not be printed if the election will not be held.

History: (1) thru (3) En. Sec. 43, Ch. 368, L. 1969; R.C.M. 1947, 23-3024; amd. Sec. 23, Ch. 571, L. 1979; (4) En. Sec. 25, Ch. 571, L. 1979; amd. Sec. 9, Ch. 475, L. 2003.

13-2-117. County governing body to provide election administrator with sufficient help. The county governing body must provide the election administrator with sufficient help for the duties imposed by this title. The cost of stationery, printing, publishing, and posting is a proper charge against the county.

History: En. Sec. 45, Ch. 368, L. 1969; amd. Sec. 13, Ch. 365, L. 1977; R.C.M. 1947, 23-3026; amd. Sec. 24, Ch. 571, L. 1979.

13-2-118 through 13-2-120 reserved.

13-2-121. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 46, Ch. 368, L. 1969; amd. Sec. 3, Ch. 243, L. 1971; R.C.M. 1947, 23-3027.

13-2-122. Charges for registers, elector lists, and mailing labels made available to public. (1) Except as provided in subsection (2), upon written request, the secretary of state or a local election administrator shall furnish to any elector, for noncommercial use, a copy of the official precinct registers, a current list of legally registered electors, or mailing labels for registered electors. Upon delivery, the secretary of state or the local election administrator may collect a charge not to exceed the actual cost of the register, list, or mailing labels.

(2) For an elector whose address information is protected from general distribution under 13-2-115(5) or (6), the secretary of state or a local election administrator may not include the elector's residential address on any register, list, or mailing labels but may list only the elector's name.

History: En. Sec. 47, Ch. 368, L. 1969; R.C.M. 1947, 23-3028; amd. Sec. 1, Ch. 66, L. 1983; amd. Sec. 2, Ch. 161, L. 1995; amd. Sec. 2, Ch. 233, L. 1997; amd. Sec. 16, Ch. 51, L. 1999; amd. Sec. 10, Ch. 475, L. 2003.

13-2-123. Election administrator to provide list of electors to secretary of state. (1) The election administrator in each county shall provide to the secretary of state the following information, when possible, for each elector:

- (a) name;
 - (b) mailing address;
 - (c) precinct number;
 - (d) residence address;
 - (e) telephone number;
 - (f) driver's license number or last four digits of the elector's social security number;
 - (g) date of birth;
 - (h) gender;
 - (i) legislative house district;
 - (j) date of registration;
 - (k) whether the elector's name is on the active or inactive list of electors; and
 - (l) whether the elector is a legally registered elector or a provisionally registered elector.
- (2) The information must be provided in accordance with rules adopted under 13-2-108.

History: En. Sec. 1, Ch. 309, L. 1997; amd. Sec. 5, Ch. 309, L. 1997; amd. Sec. 11, Ch. 475, L. 2003.

13-2-124. Registration provisions for United States electors supersede. A provision of this chapter may not be interpreted to conflict with Title 13, chapter 21.

History: En. Sec. 8, Ch. 557, L. 2003.

Part 2 Registration Procedures

13-2-201. Hours of registration. The election administrator's office shall be open for registration of electors from 8 a.m. until 5 p.m. on all regular working days. The office may be kept open for the registration of electors at other times at the discretion of the election administrator.

History: En. Sec. 24, Ch. 368, L. 1969; amd. Sec. 1, Ch. 3, L. 1974; R.C.M. 1947, 23-3005(1); amd. Sec. 26, Ch. 571, L. 1979.

13-2-205. Procedure when prospective elector not qualified at time of registration. An individual who is not eligible to register because of residence or age requirements but who will be eligible on or before election day may apply for voter registration pursuant to 13-2-110 and be registered subject to verification procedures established pursuant to 13-2-109.

History: En. Sec. 27, Ch. 368, L. 1969; R.C.M. 1947, 23-3008(1); amd. Sec. 29, Ch. 571, L. 1979; amd. Sec. 12, Ch. 475, L. 2003.

13-2-206. Citizenship requirements. A person shall not be permitted to register until he attains United States citizenship.

History: En. Sec. 27, Ch. 368, L. 1969; R.C.M. 1947, 23-3008(2).

13-2-207. Confirmation of registration. (1) The election administrator shall give or mail to each elector a notice, confirming registration and giving the location of the elector's polling place. A notice sent to an elector to whom the notice is not personally given must be sent by nonforwardable, first-class mail, which must conform to postal regulations to ensure address corrections are received. If the notice is returned undeliverable the application for voter registration may not be placed on the register of electors kept by the election administrator.

(2) The election administrator shall investigate the reason for the return of any mailed notices and mail a confirmation notice to the elector. The notice must conform to postal regulations to ensure return, not forwarding, of undelivered notices.

History: En. Sec. 30, Ch. 571, L. 1979; amd. Sec. 3, Ch. 298, L. 1987; amd. Sec. 6, Ch. 246, L. 1997.

13-2-208. Elector to furnish residential address — prohibiting registration for failure to provide address. (1) An elector shall provide the election administrator with the elector's current street address, rural address, or, if neither of those addresses is available, other

specific geographic location information from which the location of the elector's residence may be easily determined by the election administrator.

(2) The election administrator may not register an elector who fails to provide the information required by subsection (1).

History: En. Sec. 1, Ch. 63, L. 2001.

13-2-220. Maintenance of active and inactive voter registration lists for elections — rules by secretary of state. (1) The rules adopted by the secretary of state under 13-2-108 must include the following procedures, which an election administrator shall follow in every odd-numbered year:

(a) compare the entire list of registered electors against the national change of address files and provide appropriate confirmation notice to those individuals whose addresses have apparently changed;

(b) mail a nonforwardable, first-class, "return if undeliverable—address correction requested" notice to all registered electors of each jurisdiction to confirm their addresses and provide the appropriate confirmation notice to those individuals who return the notices;

(c) mail a targeted mailing to electors who failed to vote in the preceding federal general election by:

(i) sending the list of nonvoters a nonforwardable notice, followed by the appropriate forwardable confirmation notice to those electors who appear to have moved from their addresses of record;

(ii) comparing the list of nonvoters against the national change of address files, followed by the appropriate confirmation notices to those electors who appear to have moved from their addresses of record;

(iii) sending forwardable confirmation notices; or

(iv) making a door-to-door canvass.

(2) Any notices returned to the election administrator after using the procedures provided in subsection (1) must be followed by an appropriate confirmation notice that is a forwardable, first-class, postage-paid, self-addressed, return notice. If the elector fails to respond within 30 days of the confirmation notice, the election administrator shall move the elector to the inactive list.

(3) A procedure used by an election administrator pursuant to this section must be completed at least 90 days before a primary or general election for federal office.

History: En. Sec. 12, Ch. 246, L. 1997; amd. Sec. 13, Ch. 475, L. 2003.

13-2-221. Agency-based registration. (1) Qualified individuals must be given the opportunity to register to vote when applying for or receiving services or assistance:

(a) at an agency that provides public assistance;

(b) at or through an agency that provides state-funded programs primarily engaged in providing services to persons with disabilities; or

(c) at another agency designated by the secretary of state with the consent of the agency.

(2) Agency-based registration sites must:

(a) distribute application for voter registration forms with each application for services or assistance; and

(b) assist an applicant in completing an application for voter registration form, unless the applicant refuses assistance.

(3) The completed application for voter registration form must be transmitted by the agency to the election administrator of the county of the elector's residence within the time period specified by 42 U.S.C. 1973gg, et seq.

(4) As used in this section, the following definitions apply:

(a) "Agency" means a state agency as defined in 2-4-102(2)(a) or an office of a political subdivision.

(b) "Political subdivision" means a city, county, consolidated city-county government, or town.

History: En. Sec. 13, Ch. 246, L. 1997; amd. Sec. 17, Ch. 51, L. 1999.

13-2-222. Reactivation of elector. (1) The name of an elector must be moved by an election administrator from the inactive list to the active list of a county if an elector meets the requirements for registration provided in this chapter and:

- (a) appears in order to vote or votes by absentee ballot in any election;
- (b) notifies the county election administrator in writing of the elector's current residence, which must be in that county; or
- (c) completes a reactivation form provided by the county election administrator that provides current address information in that county.

(2) After an elector has complied with subsection (1)(a), (1)(b), or (1)(c), the county election administrator shall place the elector's name on the active voting list for that county.

(3) An elector reactivated pursuant to subsection (1)(a) is a legally registered elector for purposes of the election in which the elector voted.

History: En. Sec. 14, Ch. 246, L. 1997; amd. Sec. 2, Ch. 208, L. 1999; amd. Sec. 1, Ch. 446, L. 2005.

Part 3 Close of Registration

13-2-301. Close of regular registration — notice — changes. (1) The election administrator shall:

- (a) close regular registrations for 30 days before any election; and
- (b) broadcast a notice specifying the day regular registrations will close on radio or television as provided in 2-3-105 through 2-3-107 or publish the notice in a newspaper of general circulation in the county at least three times in the 4 weeks preceding the close of registration. The provisions of this subsection (1)(b) are fulfilled upon the third publication.

(2) Information to be included in the notice must be prescribed by the secretary of state.

(3) An application for voter registration properly executed and postmarked on or before the day regular registration is closed must be accepted as a regular registration for 3 days after regular registration is closed under subsection (1)(a).

(4) An individual who submits a completed registration form to the election administrator before the deadlines provided in this section is allowed to correct a mistake on the completed registration form until 5 p.m. on the 10th day following the close of regular registration, and the qualified elector is then eligible to vote in the election at the polling place for that elector's precinct.

(5) Subject to the provisions of 13-2-304, an elector who misses the deadlines provided for in this section may register to vote or change the elector's voter information and vote in the election, except as otherwise provided in 13-2-304.

History: En. Sec. 35, Ch. 368, L. 1969; amd. Sec. 1, Ch. 385, L. 1971; R.C.M. 1947, 23-3016; amd. Sec. 34, Ch. 571, L. 1979; amd. Sec. 3, Ch. 446, L. 1985; amd. Sec. 2, Ch. 302, L. 1991; amd. Sec. 12, Ch. 7, L. 2001; amd. Sec. 5, Ch. 286, L. 2005; amd. Sec. 3, Ch. 586, L. 2005.

13-2-304. Late registration — late changes — nonapplicability for school elections. (1) Except as provided in subsections (2) and (3), the following provisions apply:

(a) An elector may register or change the elector's voter registration information after the close of regular registration in 13-2-301 and vote in the election if the election administrator in the county where the elector resides receives and verifies the elector's voter registration information prior to the close of the polls on election day.

(b) Late registration is closed from noon to 5 p.m. on the day before the election.

(c) Except as provided in 13-2-514(2)(a), an elector who registers or changes the elector's voter information pursuant to this section may vote in the election only if the elector votes at the county election administrator's office.

(2) If an elector has already been sent an absentee ballot for the election, the elector may change the elector's voter registration information only with respect to the next election.

(3) The provisions of subsection (1) do not apply with respect to an elector's registration to vote in a school election held pursuant to Title 20.

History: En. Sec. 1, Ch. 286, L. 2005; amd. Sec. 5, Ch. 273, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 273 inserted (1)(b) relating to closure of late registration; and made minor changes in style. Amendment effective October 1, 2007.

Part 4 Cancellation of Registration

13-2-402. Reasons for cancellation. The election administrator shall cancel the registration of an elector if:

- (1) the elector submits a written request for cancellation;
- (2) a certificate of the death of the elector is filed or if the elector is reported to the election administrator as deceased by the department of public health and human services in the department's reports submitted to the county under 50-15-409 or through a newspaper obituary;
- (3) the elector is of unsound mind as established by a court;
- (4) the incarceration of the elector in a penal institution for a felony conviction is legally established;
- (5) a certified copy of a court order directing the cancellation is filed with the election administrator;
- (6) a notice is received from the secretary of state or from another county or state that the elector has registered in another county or state;
- (7) the elector fails to respond to certain confirmation mailings and fails to vote in two consecutive federal general elections; or
- (8) the elector fails to meet any voter qualification that is listed in 13-1-111.

History: En. Sec. 33, Ch. 368, L. 1969; amd. Sec. 1, Ch. 299, L. 1971; amd. Sec. 10, Ch. 365, L. 1977; R.C.M. 1947, 23-3014(1); amd. Sec. 37, Ch. 571, L. 1979; amd. Sec. 48, Ch. 575, L. 1981; amd. Sec. 38, Ch. 418, L. 1995; amd. Sec. 42, Ch. 546, L. 1995; amd. Sec. 7, Ch. 246, L. 1997; amd. Sec. 3, Ch. 208, L. 1999; amd. Sec. 1, Ch. 96, L. 2001; amd. Sec. 14, Ch. 475, L. 2003; amd. Sec. 4, Ch. 586, L. 2005.

Part 5 Transfer of Registration

13-2-511. Transferring registration or changing name. An elector shall notify the election administrator of a change in residence within the county or a change in name by using a transfer form provided by the election administrator or by completing the changed information on a registration or mail registration form. The form must be signed and affirmed or verified as required on the form. If a registration or mail registration form is used, it must be clearly marked "for transfer of address" or "for change of name" in a space provided on the form for that purpose.

History: En. Sec. 28, Ch. 368, L. 1969; R.C.M. 1947, 23-3009; amd. Sec. 40, Ch. 571, L. 1979; Sec. 13-2-501, MCA 1979; redes. 13-2-511 by Code Commissioner, 1979.

13-2-512. Right to vote when precinct or name changed — change of status. (1) An elector who has changed residence to a different precinct within the same county and has failed to notify the election administrator of the change by a transfer or new registration form may vote in the precinct where the elector is registered at the first election at which the elector offers to vote after the change or at a central location designated by the election administrator unless the elector's registration has been canceled as provided in 13-2-402.

(2) An elector who still resides in the same precinct where registered, whose name has changed, and who has failed to notify the election administrator of the change by a new registration form may vote under the elector's former name at the first election at which the elector offers to vote after the change unless the elector's registration has been canceled as provided in 13-2-402.

(3) The elector shall state the elector's correct residence address and name when offering to vote and shall complete a transfer form or new registration form to make the necessary correction before being allowed to sign the precinct register and vote.

History: En. Sec. 41, Ch. 571, L. 1979; amd. Sec. 9, Ch. 246, L. 1997; amd. Sec. 2, Ch. 446, L. 2005.

13-2-513. Procedure for transferring or correcting registration. Subject to the rules adopted under 13-2-108, the election administrator shall make the necessary corrections in the registration records when the election administrator receives a transfer form or corrected registration form.

History: En. Sec. 29, Ch. 368, L. 1969; R.C.M. 1947, 23-3010; amd. Sec. 42, Ch. 571, L. 1979; Sec. 13-2-502, MCA 1979; redes. 13-2-513 by Code Commissioner, 1979; amd. Sec. 15, Ch. 475, L. 2003.

13-2-514. Change of residence to another county. (1) Except as provided in subsection (2)(a), an elector who changes residence to a different county within this state shall register in the new county of residence in order to vote in any election.

(2) An elector who changes residence to a different county 30 days or less before an election may:

(a) vote in person or by absentee ballot in the precinct and county where previously registered; or

(b) update the elector's registration information and vote in the elector's new county of residence, subject to the regular registration provisions of 13-2-301 or the late registration provisions of 13-2-304.

(3) The registration information of an elector whose information is changed pursuant to this section must be updated in the statewide voter registration list pursuant to rules adopted under 13-2-108.

History: En. Sec. 43, Ch. 571, L. 1979; amd. Sec. 16, Ch. 475, L. 2003; amd. Sec. 6, Ch. 286, L. 2005; amd. Sec. 5, Ch. 586, L. 2005.

Part 6

Effect of Registration

13-2-601. Special addendum to precinct register. The name of an elector who has been assigned to vote in a precinct other than the precinct in which the person is registered, as provided in 13-3-213, must be printed on a special addendum to the precinct register in a form prescribed by the secretary of state.

History: En. Sec. 37, Ch. 368, L. 1969; amd. Sec. 12, Ch. 365, L. 1977; R.C.M. 1947, 23-3018(1); amd. Sec. 45, Ch. 571, L. 1979; amd. Sec. 11, Ch. 200, L. 1987; amd. Sec. 17, Ch. 475, L. 2003.

13-2-602. Joinder of parties in proceedings to compel entry of name in register. In any action or proceeding instituted in a district court to compel the registrar to enter the name of any elector in the precinct register, as many persons may be joined as plaintiffs for cause of action and as many persons as there are causes of action may be joined as defendants.

History: En. Sec. 38, Ch. 368, L. 1969; R.C.M. 1947, 23-3019.

13-2-603. Repealed. Sec. 44, Ch. 475, L. 2003.

History: En. Sec. 39, Ch. 368, L. 1969; R.C.M. 1947, 23-3020; amd. Sec. 46, Ch. 571, L. 1979.

CHAPTER 3

PRECINCTS AND POLLING PLACES

Part 1

Designation of Precincts and Polling Places

13-3-101. Establishment of election precincts. (1) The territorial unit for elections is the election precinct. All election precincts shall be designated by numbers, names, or both.

(2) The governing body of each county shall establish a convenient number of election precincts, equalizing the number of electors in each precinct as nearly as possible.

History: En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973; R.C.M. 1947, 23-3101(1), (2), (3)(b); amd. Sec. 47, Ch. 571, L. 1979.

13-3-102. Change of precinct boundaries. (1) The county governing body may change the boundaries of precincts, but not within 100 days before any primary or between a general election and the primary for that election. When the changes are required to make precinct boundaries conform to legislative district boundaries following the adoption of a districting and apportionment plan under Article V, section 14, of the 1972 Montana constitution or other district boundaries changed by the districting and apportionment plan, the changing of precinct boundaries must be accomplished within 45 days of the filing of the final plan.

(2) All changes must be certified to the election administrator 3 days or less after the change is made.

(3) The officials responsible for preparing a districting and apportionment plan shall consider the problems of conforming present precinct boundaries to the new districts as well as

existing boundaries of wards, school districts, and other districts. The election administrator of counties involved in the plan shall be consulted before adoption of the final plan.

History: En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973; R.C.M. 1947, 23-3101(3)(a), (4); amd. Sec. 48, Ch. 571, L. 1979.

13-3-103. Certification of boundary changes. (1) Not more than 10 days after an order of the governing body has established or changed the boundaries of an election precinct, the governing body shall cause to be prepared and delivered to the election administrator a written legal description and a map showing the borders of all precincts and districts in which elections are held within the county.

(2) Not more than 10 days after school district or other election district boundaries have been changed, the governing body making the change shall certify any changes or alterations in the boundaries to the election administrator and deliver a written legal description and a map showing boundaries of the wards, school districts, or other election districts. The map must be sufficiently detailed to clearly identify the wards or districts and the territory included in each.

History: (1)En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973; Sec. 23-3101, R.C.M. 1947; (2)En. Sec. 19, Ch. 368, L. 1969; Sec. 23-3102, R.C.M. 1947; R.C.M. 1947, 23-3101(3)(c), 23-3102; amd. Sec. 49, Ch. 571, L. 1979.

13-3-104. Precincts, wards, and election districts. (1) A ward or election district may be divided into two or more precincts, and a precinct may be divided into two or more polling places.

(2) Precincts may include two or more adjoining wards or election districts, together with contiguous territory lying outside the municipality or district, if provision can be made for clearly identifying the electors eligible to vote in each ward or district.

History: En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973; R.C.M. 1947, 23-3101(5), (6); amd. Sec. 50, Ch. 571, L. 1979.

13-3-105. Designation of polling place. (1) The county governing body shall designate the polling place for each precinct no later than 30 days before a primary election. The same polling place must be used for both the primary and general election if at all possible. Changes may be made by the governing body in designated polling places up to 10 days before an election if a designated polling place is not available. Polling places may be located outside the boundaries of a precinct.

(2) Not more than 10 days or less than 2 days before an election, the election administrator shall publish in a newspaper of general circulation in the county a statement of the locations of the precinct polling places. The election administrator shall include in the published notice the accessibility designation for each polling place according to the classification in 13-3-207. Notice may also be given as provided in 2-3-105 through 2-3-107.

(3) An election administrator may make changes in the location of a polling place if an emergency occurs 10 days or less before an election. Notice must be posted at both the old and new polling places, and other notice may be given by whatever means available.

(4) Any publicly owned building may be used as a polling place. The building must be furnished at no charge as long as no structural changes are required in order to use the building as a polling place.

(5) The exterior of the voting systems, or of the booths in which they are placed, and every part of the polling place must be in plain view of the election judges.

History: En. Sec. 20, Ch. 368, L. 1969; amd. Sec. 1, Ch. 169, L. 1974; R.C.M. 1947, 23-3103; amd. Sec. 51, Ch. 571, L. 1979; amd. Sec. 1, Ch. 562, L. 1981; amd. Sec. 12, Ch. 200, L. 1987; amd. Sec. 9, Ch. 414, L. 2003.

Part 2

Accessibility of Polling Places

13-3-201. Purpose. The purpose of this part is to promote the fundamental right to vote by improving access for individuals with disabilities and elderly individuals to polling places. The provisions of this part acknowledge that, in certain cases, it may not be possible to locate a polling place that meets the standards for accessibility, either because an accessible polling place does not exist or, if it does, its location in the precinct would require undue travel for a majority of the electors. In those cases when an accessible polling place is not available, this part

provides voters with disabilities and elderly voters an alternative means for casting a ballot on election day.

History: En. Sec. 1, Ch. 200, L. 1987; amd. Sec. 6, Ch. 472, L. 1997.

13-3-202. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) “Accessible” means accessible to individuals with disabilities and elderly individuals for purposes of voting as determined in accordance with standards established by the secretary of state under 13-3-205.

(2) “Disability” means a temporary or permanent physical impairment such as:

(a) impaired vision;

(b) impaired hearing; or

(c) impaired mobility. Individuals having impaired mobility include those who require use of a wheelchair and those who are ambulatory but are physically impaired because of age, disability, or disease.

(3) “Elderly” means 65 years of age or older.

(4) “Election” means a general, special, or primary election held in an even-numbered year, as provided for in 13-1-104(1) and 13-1-107(1).

(5) “Inaccessible” means not accessible under standards adopted pursuant to 13-3-205.

(6) “Rural polling place” means a location that is expected to serve less than 200 registered electors.

History: En. Sec. 2, Ch. 200, L. 1987; amd. Sec. 7, Ch. 472, L. 1997; amd. Sec. 1, Ch. 228, L. 2007.

Compiler’s Comments

2007 Amendment: Chapter 228 inserted definitions of inaccessible and rural polling place. Amendment effective October 1, 2007.

13-3-203. Repealed. Sec. 7, Ch. 228, L. 2007.

History: En. Sec. 3, Ch. 200, L. 1987; amd. Sec. 8, Ch. 472, L. 1997.

13-3-204. Repealed. Sec. 7, Ch. 228, L. 2007.

History: En. Sec. 4, Ch. 200, L. 1987.

13-3-205. Adoption of standards for polling place accessibility — rulemaking authority. (1) The secretary of state, with advice from election administrators and individuals with disabilities and elderly individuals, shall establish standards for accessibility of polling places.

(2) (a) Standards for polling places approved pursuant to subsection (1) prior to October 1, 2005, must be consistent with the standards for accessibility established by the American national standards institute and the uniform federal accessibility standards.

(b) Standards for polling places approved on or after October 1, 2005, must comply with the accessibility standards in the Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq.

(3) The secretary of state:

(a) may adopt rules to implement the provisions of this part; and

(b) shall adopt rules to implement the exemption provisions of 13-3-212.

History: En. Sec. 5, Ch. 200, L. 1987; amd. Sec. 9, Ch. 472, L. 1997; amd. Sec. 2, Ch. 367, L. 2005; amd. Sec. 2, Ch. 228, L. 2007.

Compiler’s Comments

2007 Amendment: Chapter 228 in (2)(a) and (2)(b) at beginning inserted “Standards for”; inserted (3) concerning adoption of rules; and made minor changes in style. Amendment effective October 1, 2007.

13-3-206. Survey of polling places to determine accessibility — procedures. (1) The election administrator in each county shall conduct an onsite survey of each polling place used in an election to determine whether it meets the standards for accessibility established under 13-3-205.

(2) Each election administrator shall conduct the survey in a manner that represents the path of travel that an elector would reasonably be expected to take in order to reach the polling place on election day.

(3) A polling place that has been surveyed pursuant to this section need not be surveyed again unless the conditions of accessibility change.

History: En. Sec. 6, Ch. 200, L. 1987; amd. Sec. 3, Ch. 228, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 228 at beginning of (1) deleted "Except as provided in 13-3-207 and 13-3-211"; in (3) near middle after "surveyed" substituted "pursuant to this section" for "and designated as accessible"; and made minor changes in style. Amendment effective October 1, 2007.

13-3-207. Polling place classifications. As a result of the survey provided in 13-3-206, each polling place must be classified as:

- (1) accessible; or
- (2) inaccessible.

History: En. Sec. 7, Ch. 200, L. 1987; amd. Sec. 10, Ch. 472, L. 1997; amd. Sec. 4, Ch. 228, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 228 deleted former (1)(c) and (1)(d) that read: "(c) technically inaccessible but usable; or

(d) rural"; deleted former (2) through (6) that read: "(2) An accessible polling place is one that meets the standards for accessibility established by the secretary of state under 13-3-205.

(3) An inaccessible polling place is one that does not meet the standards for accessibility and cannot be made accessible through safe, practical, and cost-effective methods.

(4) A technically inaccessible but usable polling place is one that does not meet all the standards for accessibility but has been surveyed, evaluated, and certified as being adequate for use as a polling place. The certification is cause for the secretary of state to grant the polling place an exemption from the standards for accessibility. However, in a future election, the secretary of state may issue an objection to the criteria used for determining that the facility is usable as a polling place.

(5) A rural polling place is one that serves less than 200 registered electors and is:

- (a) granted an exemption from the standards for accessibility established under 13-3-205; and
- (b) subject to review and redesignation 45 days prior to an election.

(6) A rural designation may not be construed as cause for denying electors with disabilities or elderly electors at a polling place the right to choose an alternative means for casting a ballot on election day as provided in 13-3-213"; and made minor changes in style. Amendment effective October 1, 2007.

13-3-208 through 13-3-210 reserved.

13-3-211. Emergency exemption. (1) The secretary of state shall exempt a polling place from the requirements of this part if an emergency occurs within 10 days prior to an election. An emergency is considered to exist if a polling place becomes unavailable by reason of loss of lease, fire, snow, or natural disaster.

(2) If an emergency occurs, the election administrator in the county shall designate a new polling place in accordance with the procedure provided in 13-3-105. The new polling place must be considered temporary and must be exempt from the survey procedures established under 13-3-206. However, such polling place may not be used in a subsequent election unless it is surveyed as required in 13-3-206.

History: En. Sec. 8, Ch. 200, L. 1987.

13-3-212. Exemption if no accessible polling place is reasonably available. (1) If an election administrator desires to designate as a polling place a location that is inaccessible, the election administrator shall make a request in writing to the secretary of state asking that an inaccessible polling place be exempt from the standards for accessibility.

(2) The secretary of state may grant an exemption pursuant to rules adopted under 13-3-205 if all potential polling places have been surveyed and it is determined that:

(a) an accessible polling place is not available and the county cannot safely or reasonably make a polling place temporarily accessible in the area involved; or

(b) the location is a rural polling place and designation of an accessible facility as a polling place will require excessive travel or impose other hardships for the majority of qualified electors in the precinct.

History: En. Sec. 9, Ch. 200, L. 1987; amd. Sec. 5, Ch. 228, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 228 deleted former (1) that read: "(1) If an existing polling place has been surveyed and designated as being inaccessible, the election administrator shall make a reasonable effort to locate and survey all potential sites with comparable utility as a polling place"; in (1) at beginning inserted "If an election administrator desires to designate as a polling place a location that is inaccessible"; in (2) at beginning inserted "The secretary of state may grant an exemption pursuant to rules adopted under 13-3-205"; deleted introductory clause in former (3) that read: "(3) Nothing in this section may require an election administrator to select"; in (2)(b) at beginning inserted "the location is a rural polling place and designation of"; and made minor changes in style. Amendment effective October 1, 2007.

13-3-213. Alternative means for casting ballot. (1) The election administrator shall provide individuals with disabilities and elderly individuals an alternative means for casting a ballot on election day if they are assigned to an inaccessible polling place. These alternative means for casting a ballot include:

- (a) delivery of a ballot to the elector as provided in 13-13-118;
- (b) voting by absentee ballot as provided in 13-13-222; and
- (c) prearranged assignment to an accessible polling place within the county.

(2) An elector with a disability or an elderly elector assigned to an inaccessible polling place who desires to vote at an accessible polling place:

- (a) shall request assignment to an accessible polling place by notifying the election administrator in writing at least 7 days preceding the election;
 - (b) must be assigned to the nearest accessible polling place for the purpose of voting in the election;
 - (c) shall sign the elector's name on a special addendum to the official precinct register as required in 13-2-601; and
 - (d) must receive the same ballot to which the elector is otherwise entitled.
- (3) For the purpose of subsection (2), the ballot cast at an alternative polling place must be processed and counted in the same manner as an absentee ballot.

History: En. Sec. 10, Ch. 200, L. 1987; amd. Sec. 11, Ch. 472, L. 1997; amd. Sec. 6, Ch. 228, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 228 in (2)(b) near middle after "place" deleted "or technically inaccessible polling place". Amendment effective October 1, 2007.

CHAPTER 4 ELECTION JUDGES

Part 1 Appointment

13-4-101. Appointment of election judges. At least 30 days before the primary election in even-numbered years, the county governing body shall appoint three or more election judges for each precinct, one of whom must be designated chief judge.

History: En. Sec. 49, Ch. 368, L. 1969; amd. Sec. 1, Ch. 258, L. 1971; R.C.M. 1947, 23-3201(part); amd. Sec. 52, Ch. 571, L. 1979; amd. Sec. 1, Ch. 120, L. 1983; amd. Sec. 10, Ch. 414, L. 2003.

13-4-102. Manner of choosing election judges. (1) Subject to 13-4-107, election judges must be chosen from lists of qualified registered electors for each precinct in the county, submitted at least 45 days before the primary election in even-numbered years by the county central committees of the political parties eligible to nominate candidates in the primary.

(2) The list of each party may contain more names than the number of election judges to be appointed. The names of those not appointed as election judges must be given to the election administrator for use in making appointments to fill vacancies.

(3) Each board of election judges must include judges representing all parties that have submitted lists as provided in subsection (1). No more than the number of election judges needed to obtain a simple majority may be appointed from the list of one political party in each precinct. If any of the political parties entitled to do so fail to submit a list, the governing body shall, insofar as possible, appoint judges so that all parties eligible to participate in the primary are represented on each board.

(4) The election administrator shall make appointments to fill vacancies from the list provided for in subsection (2). If the list is insufficient or if one or more of the eligible political parties fails to submit a list, the election administrator may randomly select, either by manual drawing or by computer, sufficient qualified registered electors in the county to fill election judge vacancies in all precincts.

(5) An elector chosen to potentially serve as an election judge must be notified of selection at least 30 days before the primary election in even-numbered years. Each elector who agrees to serve as an election judge shall attend a training class conducted under 13-4-203 and shall continue to serve as provided in 13-4-103.

History: En. Sec. 50, Ch. 368, L. 1969; amd. Sec. 2, Ch. 258, L. 1971; amd. Sec. 1, Ch. 125, L. 1973; R.C.M. 1947, 23-3202; amd. Sec. 54, Ch. 571, L. 1979; amd. Sec. 1, Ch. 232, L. 1993; amd. Sec. 11, Ch. 414, L. 2003.

13-4-103. Judges to serve until others appointed. The election judges continue to be judges of all elections held in their precincts until other judges are appointed.

History: En. Sec. 51, Ch. 368, L. 1969; amd. Sec. 3, Ch. 258, L. 1971; R.C.M. 1947, 23-3203; amd. Sec. 55, Ch. 571, L. 1979.

13-4-104. Election administrator to notify judges. The election administrator must notify the judges of their appointment and of the time set for instruction sessions.

History: En. Sec. 52, Ch. 368, L. 1969; amd. Sec. 4, Ch. 258, L. 1971; R.C.M. 1947, 23-3204(1); amd. Sec. 56, Ch. 571, L. 1979.

13-4-105. Oath of judges. Before beginning service on each election day, the election judges must take and subscribe the official oath prescribed by the constitution. The election judges may administer the oath to each other.

History: En. Sec. 53, Ch. 368, L. 1969; R.C.M. 1947, 23-3205(1); amd. Sec. 57, Ch. 571, L. 1979; amd. Sec. 2, Ch. 232, L. 1993.

13-4-106. Compensation of judges. (1) Except as provided in subsection (2), election judges must be paid at least the prevailing federal minimum wage for the number of hours worked during an election plus the number of hours spent at the instruction session. Mileage may be paid to election judges for attending instruction sessions. Election judges are exempt from unemployment insurance coverage for services performed pursuant to this chapter if the remuneration received by the election judge is less than \$1,000 in the calendar year.

(2) The chief election judge may be paid at a rate higher than the other election judges and may be reimbursed for the actual expenses of transporting election materials.

(3) The election administrator shall certify the amount due each election judge to the county governing body as soon after an election as all records necessary for the certification are received.

History: En. Sec. 55, Ch. 368, L. 1969; R.C.M. 1947, 23-3207; amd. Sec. 58, Ch. 571, L. 1979; amd. Sec. 7, Ch. 591, L. 1991; amd. Sec. 1, Ch. 195, L. 1995; amd. Sec. 1, Ch. 44, L. 2001; amd. Sec. 1, Ch. 47, L. 2003.

13-4-107. Qualifications of election judges. (1) Election judges shall be registered electors of the county and of the precinct in which they serve, except as provided in 13-4-102(4).

(2) No election judge may be a candidate or a spouse, ascendant, descendant, brother, or sister of a candidate or a candidate's spouse or the spouse of any of these in an election precinct where the candidate's name appears on the ballot. However, this does not apply to candidates for precinct offices.

History: En. Sec. 53, Ch. 571, L. 1979.

Part 2 Functions

13-4-201. Duties of chief election judge. The chief election judge shall be responsible for the conduct of the proceedings in the polling place, shall assign duties to other members of the board of election judges, and, if assigned to work through the close of the polls, shall be responsible for the return of or for arranging the return of all ballots and election supplies to the election administrator.

History: En. Sec. 52, Ch. 368, L. 1969; amd. Sec. 4, Ch. 258, L. 1971; R.C.M. 1947, 23-3204(2), (3); amd. Sec. 59, Ch. 571, L. 1979; amd. Sec. 3, Ch. 232, L. 1993.

13-4-202. Administration of oaths. Any election judge may administer and certify oaths required during an election.

History: En. Sec. 53, Ch. 368, L. 1969; R.C.M. 1947, 23-3205(2); amd. Sec. 60, Ch. 571, L. 1979.

13-4-203. Instruction of judges — training materials. (1) Before each election, all election judges who do not possess a current certificate of instruction obtained pursuant to 13-1-203(3) must be instructed by the election administrator. In precincts where voting systems are used, instructions must cover both how to operate the voting system and how to manually process any paper ballots.

(2) Chief judges may be required to attend the training session before each election, as well as a special session that may be held for chief judges only, even if they possess a current certificate of instruction.

(3) Any individual willing to be appointed as an election judge may attend an instruction session by registering with the election administrator. However, the individual may not be paid for attendance unless the individual is appointed as an election judge.

(4) Each election judge completing a training session under this section must be given a certificate of completion. An individual may not serve as an election judge without a valid certificate obtained under 13-1-203(3) or this section. However, this does not apply to individuals filling vacancies in emergencies.

(5) All certificates of completion expire 30 days before the primary election in even-numbered years.

(6) Notice of place and time of instruction must be given by the election administrator to the presiding officers of the political parties in the county.

History: En. Sec. 54, Ch. 368, L. 1969; amd. Sec. 5, Ch. 258, L. 1971; R.C.M. 1947, 23-3206; amd. Sec. 61, Ch. 571, L. 1979; amd. Sec. 12, Ch. 414, L. 2003.

13-4-207. Judges to remain at polls — emergency provisions — part-time service.

(1) Election judges may not leave the premises on which the polling place is located during the hours they are assigned to work unless permission to leave is given by the chief election judge for that precinct. Permission may be granted only for illness or a family emergency.

(2) A chief election judge must obtain the permission of the election administrator to leave the polling place premises because of illness or an emergency. If the chief judge is excused, the election administrator shall appoint one of the other judges to act as chief election judge.

(3) The time of departure and reason for leaving shall be entered near the oath form subscribed by the election judge or on a form provided by the election administrator. The chief election judge shall sign the entry.

(4) The election administrator may appoint a judge to replace an excused judge.

(5) The election administrator may assign a judge or chief election judge to work less than a full polling day, but at least three judges, including a chief election judge, must be on duty during the time that the polls are open.

History: En. Sec. 62, Ch. 571, L. 1979; amd. Sec. 4, Ch. 232, L. 1993.

CHAPTER 10 PRIMARY ELECTIONS AND NOMINATIONS

Part 2 Preprimary Procedures

13-10-211. Declaration of intent for write-in candidates. (1) Except as provided in subsection (7), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. Except as provided in subsections (2) and (3), the declaration must be filed no later than 5 p.m. on the 10th day before the date established under 13-13-205 on which a ballot must be available for absentee voting for the election and must contain:

- (a) (i) the candidate's first and last names;
- (ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the candidate's last name;
- (iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and
- (iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;
- (b) the candidate's mailing address;
- (c) a statement declaring the candidate's intention to be a write-in candidate;

- (d) the title of the office sought;
- (e) the date of the election;
- (f) the date of the declaration; and
- (g) the candidate's signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the office that the write-in candidate is seeking dies or is charged with a felony offense.

(3) A person seeking to become a write-in candidate in a mail ballot election or for a trustee position in a school board election shall file a declaration of intent no later than 5 p.m. on the 26th day before the election.

(4) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with the secretary of state. Each election administrator and school district clerk shall notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

(5) A declaration of intent may be sent by facsimile transmission if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state.

(6) A declaration is not valid until the filing fee required pursuant to 13-10-202 is received by the secretary of state or the election administrator.

(7) The requirements in subsection (1) do not apply if:

- (a) an election is held;
- (b) a person's name is written in on the ballot;
- (c) the person is qualified for and seeks election to the office for which the person's name was written in; and

(d) no other candidate has filed a declaration or petition for nomination or a declaration of intent.

History: En. Sec. 1, Ch. 391, L. 1989; amd. Sec. 1, Ch. 143, L. 1995; amd. Sec. 2, Ch. 40, L. 1999; amd. Sec. 1, Ch. 129, L. 1999; amd. Sec. 1, Ch. 15, L. 2001; amd. Sec. 16, Ch. 414, L. 2003; amd. Sec. 19, Ch. 475, L. 2003; amd. Sec. 9, Ch. 586, L. 2005; amd. Sec. 1, Ch. 191, L. 2007; amd. Sec. 8, Ch. 273, L. 2007; amd. Sec. 1, Ch. 338, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 191 in (1) near end of third sentence substituted "10th day before the date established under 13-13-205 on which a ballot must be available for absentee voting for the election" for "15th day before the election". Amendment effective October 1, 2007.

Chapter 273 in (2) near end after "dies" deleted "withdraws from the election"; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 338 in (3) after "candidate" inserted "in a mail ballot election or" and after "board" inserted "election"; and made minor changes in style. Amendment effective October 1, 2007.

Applicability: Section 2, Ch. 191, L. 2007, provided: "[This act] applies to elections held after January 1, 2008."

CHAPTER 12 ELECTION SUPPLIES AND BALLOTS

Part 1 Election Supplies

13-12-101. Copies of election laws to be furnished. The secretary of state shall furnish to each election administrator copies of this title sufficient to provide each election precinct in the administrator's county with two copies and to provide a small extra supply for the administrator.

History: (1)En. Sec. 16, Ch. 368, L. 1969; Sec. 23-2904, R.C.M. 1947; (2)En. 23-4794 by Sec. 19, Ch. 480, L. 1975; amd. Sec. 66, Ch. 365, L. 1977; Sec. 23-4794, R.C.M. 1947; R.C.M. 1947, 23-2904, 23-4794; amd. Sec. 90, Ch. 571, L. 1979; amd. Sec. 1, Ch. 121, L. 1983; amd. Sec. 1, Ch. 113, L. 1993.

13-12-102. Items to be furnished by election administrators. The election administrators shall deliver to each polling place or to the chief election judge for a polling place all supplies necessary to conduct the election at that polling place. If the blank ballots for the polling place are delivered before noon of the day before the election, the election administrator shall retain sufficient ballots to supply electors requesting absentee ballots. The election

administrator shall write in the pollbook for that polling place, after the numbers of the ballots retained, "reserved for absentee ballots".

History: Ap.p. Sec. 84, Ch. 368, L. 1969; Sec. 23-3501, R.C.M. 1947; Ap.p. Sec. 4280, Pol. C. 1895; re-en. Sec. 2939, Rev. C. 1907; re-en. Sec. 4515, R.C.M. 1921; Cal. Pol. C. Sec. 4064; re-en. Sec. 4515, R.C.M. 1935; Sec. 16-1156, R.C.M. 1947; R.C.M. 1947, 16-1156, 23-3501; amd. Sec. 91, Ch. 571, L. 1979.

Part 2 Ballots

13-12-201. Secretary of state to certify ballot. (1) Seventy-five days or more before an election, except as provided in 13-10-208, the secretary of state shall certify to the election administrators the name and party or other designation of each candidate entitled to appear on the ballot and the ballot issues as shown in the official records of the secretary of state's office, which must include the notification specified in 13-37-126.

(2) The election administrator shall certify the name and party or other designation of each candidate entitled to appear on the ballot and the ballot issues as shown in the official records of the election administrator's office, which must include the notification specified in 13-37-126, and shall have the official ballots prepared.

(3) If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana constitution to seek the office for which the candidate has filed because the candidate has changed residence, the secretary of state shall notify the candidate that the candidate is required to withdraw as provided in 13-10-325.

History: En. Sec. 100, Ch. 368, L. 1969; R.C.M. 1947, 23-3517(3); amd. Sec. 92, Ch. 571, L. 1979; amd. Sec. 31, Ch. 250, L. 1985; amd. Sec. 4, Ch. 74, L. 1993; amd. Sec. 21, Ch. 414, L. 2003.

13-12-202. Ballot form and uniformity. (1) The secretary of state shall adopt statewide uniform rules that prescribe the ballot form for each type of ballot used in this state. The rules must conform to the provisions of this title unless the voting system used clearly requires otherwise. At a minimum, the rules must address:

- (a) the manner in which each type of ballot may be corrected under 13-12-204;
 - (b) what provisions must be made on the ballot for write-in candidates;
 - (c) the size and content of stubs on paper ballots, except as provided in 13-19-106(1);
 - (d) how unvoted ballots must be handled;
 - (e) how the number of individuals voting and the number of ballots cast must be recorded;
- and
- (f) the order and arrangement of voting system ballots.

(2) The names of all candidates to appear on the ballots must be in the same font size and style.

(3) Notwithstanding 13-19-106(1), when the stubs are detached, it must be impossible to distinguish any one of the ballots from another ballot for the same office or issue.

(4) The ballots must contain the name of each candidate whose nomination is certified under law for an office and no other names, except that the names of candidates for president and vice president of the United States must appear on the ballot as provided in 13-25-101(2).

History: En. Sec. 91, Ch. 368, L. 1969; R.C.M. 1947, 23-3508(4); amd. Sec. 93, Ch. 571, L. 1979; amd. Sec. 22, Ch. 414, L. 2003.

13-12-203. Appearance of candidate's name and party designation on ballot. (1) Subject to 13-12-202 and except as provided in 13-10-209 for nonpartisan offices and 13-10-303 for certain other candidates, in partisan elections, candidates' names must appear under the title of the office sought, with the name of the party in not more than three words appearing opposite the name.

(2) Subject to 13-12-202, in nonpartisan elections, the candidates' names must appear under the title of the office sought, with no description or designation appearing with the name unless partisan and nonpartisan offices appear on the same ballot. In such a case, the names of nonpartisan candidates must appear with the words "Nominated without party designation".

History: En. Sec. 92, Ch. 368, L. 1969; amd. Sec. 2, Ch. 254, L. 1971; R.C.M. 1947, 23-3509; amd. Sec. 94, Ch. 571, L. 1979; amd. Sec. 23, Ch. 414, L. 2003.

13-12-204. Method of correction of ballot. If an appointment has been made to replace a candidate, as provided in 13-10-326, 13-10-327, or 13-10-328, or if a candidate for lieutenant

governor has been advanced to the candidacy for governor, as provided in 13-10-328, after the ballots have been prepared but before the election, the election administrator may:

- (1) correct the ballot in a manner consistent with rules adopted under 13-12-202;
- (2) have the entire ballot redone; or
- (3) have a separate ballot prepared only for the office for which the new candidate is a candidate.

History: En. Sec. 93, Ch. 368, L. 1969; R.C.M. 1947, 23-3510; amd. Sec. 95, Ch. 571, L. 1979; amd. Sec. 3, Ch. 85, L. 1997; amd. Sec. 24, Ch. 414, L. 2003.

13-12-205. Arrangement of names — rotation on ballot. (1) The candidates' names must be arranged alphabetically on the ballot according to surnames under the title of the respective offices and rotated as provided in this section.

(2) (a) If two or more individuals are candidates for nomination or election to the same office, the election administrator shall divide the ballot forms into sets equal in number to the greatest number of candidates for any office. The candidates for nomination to an office by each political party must be considered separately in determining the number of sets necessary for a primary election.

(b) The election administrator shall begin with a form arranged alphabetically and rotate the names of the candidates so that each candidate's name will be at the top of the list for each office on substantially an equal number of ballots. If it is not numerically possible to place each candidate's name at the top of the list, the names must be rotated in groups so that each candidate's name is as near the top of the list as possible on substantially an equal number of ballots.

(c) If the county contains more than one legislative district, the election administrator may rotate each candidate's name so that it will be at or near the top of the list for each office on substantially an equal number of ballots in each house district.

(d) For purposes of rotation, the offices of president and vice president and of governor and lieutenant governor must be considered as a group.

(e) No more than one of the sets may be used in preparing the ballot for use in any one precinct, and all ballots furnished for use in any precinct must be identical.

History: En. Sec. 94, Ch. 368, L. 1969; R.C.M. 1947, 23-3511; amd. Sec. 96, Ch. 571, L. 1979; amd. Sec. 1, Ch. 576, L. 1985; amd. Sec. 25, Ch. 414, L. 2003; amd. Sec. 14, Ch. 273, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 273 in (2)(a) at beginning of first sentence deleted "Except as provided in subsection (3)"; deleted former (3) that read: "(3) In a precinct where a nonpaper-based voting system is used, the election administrator need not rotate candidates' names as provided in subsection (2) on the paper ballots required under 13-17-305 unless more than 5% of the electors voting in the precinct in the last preceding general election voted using paper ballots. If the candidates' names are not rotated, the election administrator shall determine by lot the arrangement of the names on the paper ballot required under 13-17-305"; and made minor changes in style. Amendment effective October 1, 2007.

13-12-207. Order of placement. (1) The order on the ballot for state and federal offices must be as follows:

(a) If the election is in a year in which a president of the United States is to be elected, in spaces separated from the balance of the party tickets by a heavy black line must be the names and spaces for voting for candidates for president and vice president. The names of candidates for president and vice president for each political party must be grouped together.

- (b) United States senator;
- (c) United States representative;
- (d) governor and lieutenant governor;
- (e) secretary of state;
- (f) attorney general;
- (g) state auditor;
- (h) state superintendent of public instruction;
- (i) public service commissioners;
- (j) clerk of the supreme court;
- (k) chief justice of the supreme court;
- (l) justices of the supreme court;
- (m) district court judges;

- (n) state senators;
- (o) members of the house of representatives.
- (2) The following order of placement must be observed for county offices:
 - (a) clerk of the district court;
 - (b) county commissioner;
 - (c) county clerk and recorder;
 - (d) sheriff;
 - (e) coroner;
 - (f) county attorney;
 - (g) county superintendent of schools;
 - (h) county auditor;
 - (i) public administrator;
 - (j) county assessor;
 - (k) county treasurer;
 - (l) surveyor;
 - (m) justice of the peace.
- (3) The secretary of state shall designate the order for placement on the ballot of any offices not on the above lists, except that the election administrator shall designate the order of placement for municipal, charter, or consolidated local government offices and district offices when the district is part of only one county.
- (4) Constitutional amendments must be placed before statewide referendum and initiative measures. Ballot issues for a county, municipality, school district, or other political subdivision must follow statewide measures in the order designated by the election administrator.
- (5) If any offices are not to be elected they may not be listed, but the order of the offices to be filled must be maintained.
- (6) If there is a short-term and a long-term election for the same office, the long-term office must precede the short-term.

History: Ap. p. Sec. 96, Ch. 368, L. 1969; amd. Sec. 5, Ch. 28, L. 1973; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 29, Ch. 365, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; Sec. 23-3513, R.C.M. 1947; Ap. p. Sec. 100, Ch. 368, L. 1969; Sec. 23-3517, R.C.M. 1947; R.C.M. 1947, 23-3513, 23-3517(1), (2); amd. Sec. 97, Ch. 571, L. 1979; amd. Sec. 13, Ch. 7, L. 2001; amd. Sec. 15, Ch. 273, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 273 in (1) near beginning substituted "federal offices" for "national offices"; and made minor changes in style. Amendment effective October 1, 2007.

13-12-210. Number of ballots to be provided for each precinct. (1) The election administrator shall provide each election precinct with sufficient ballots for the electors registered, plus an extra supply to cover spoiled ballots.

(2) The election administrator shall keep a record in his office showing the exact number of ballots that are delivered to the election judges of each precinct.

History: En. Sec. 99, Ch. 368, L. 1969; R.C.M. 1947, 23-3516; amd. Sec. 100, Ch. 571, L. 1979.

13-12-212. Election administrator to provide official ballots — other ballots prohibited. Each election administrator shall provide the official ballots for every election conducted by the election administrator. A ballot other than an official ballot may not be cast or counted in any election.

History: En. Sec. 89, Ch. 368, L. 1969; amd. Sec. 27, Ch. 365, L. 1977; R.C.M. 1947, 23-3506; amd. Sec. 101, Ch. 571, L. 1979; amd. Sec. 26, Ch. 414, L. 2003.

13-12-214. Sample ballots. The election administrator may have sample ballots printed in a number sufficient to answer requests from the political parties, schools, and electors. Sample ballots must be duplicates of the official ballots but must be clearly distinguishable from official ballots and may not have perforated stubs or be numbered.

History: En. Sec. 102, Ch. 571, L. 1979.

CHAPTER 13 ELECTION PROCEDURE

Part 1 Procedure at Polling Place

13-13-101. Duties — proclamation prior to opening and closing polls. (1) The election judges shall meet at their assigned polling places at the time set by the election administrator. The judges shall take and subscribe the official oath prescribed by the constitution. They may administer the oath to each other. The judges shall check all supplies and complete preparations for voting before the time set for opening the polls, under the direction of the chief election judge.

(2) Before the polls are opened or closed, that fact must be proclaimed at the place of election.

History: En. Sec. 102, Ch. 368, L. 1969; R.C.M. 1947, 23-3602; amd. Sec. 103, Ch. 571, L. 1979.

13-13-111. Provision and use of voting stations. (1) The election administrator shall provide a sufficient number of voting stations to allow voting to proceed with as little delay as possible.

(2) Voting stations must be arranged in a manner that will not permit any other individual to see how the elector votes or has voted.

(3) No more than one individual may occupy a voting station at one time, except when assistance is furnished to an elector as provided by law.

(4) An individual may not occupy a voting station longer than is reasonably necessary to prepare the elector's ballot, after which the election judges may eject the elector from the station.

History: En. Sec. 104, Ch. 571, L. 1979; amd. Sec. 27, Ch. 414, L. 2003.

13-13-112. Display of instructions for electors. (1) Except as provided in subsection (3), instructions for electors on how to prepare their ballots or use a voting system must be posted in each voting station provided for the preparation of ballots and elsewhere in the polling place.

(2) The instructions must be in easily read type, 18 point or larger, and explain:

- (a) how to obtain ballots for voting;
- (b) how to prepare ballots, including how to:
 - (i) cast a valid vote, including a valid vote for a write-in candidate;
 - (ii) correct a mistake; and
 - (iii) ensure the proper disposition of the ballot after the elector is finished voting;
- (c) how to obtain a new ballot in place of one spoiled by accident;
- (d) how to vote provisionally pursuant to 13-13-601;
- (e) the election date and the hours the polls are open; and
- (f) instructions for first-time voters who registered by mail.

(3) If the instructions for use of a voting system are printed on the system or are part of a ballot package given to each elector, separate instructions need not be posted in the voting station.

(4) Official ballots, clearly marked "sample" across the face, must be posted at each voting station and in conspicuous places around the polling place.

History: En. Sec. 105, Ch. 571, L. 1979; amd. Sec. 13, Ch. 200, L. 1987; amd. Sec. 28, Ch. 414, L. 2003; amd. Sec. 20, Ch. 475, L. 2003.

13-13-113. Warning notice to be posted. Warning notices shall be posted in conspicuous places in the polling place. Each notice shall be headed "WARNING" in large letters and shall state:

"The sections of law printed below list specific conduct or actions which may cause an elector to be subject to criminal prosecution. This is not intended to be a complete printing of all laws pertaining to election violations."

Below this statement shall be printed the following sections: 13-35-201; 13-35-202; 13-35-206; 13-35-211; 13-35-214; 13-35-217; and 13-35-218.

History: En. Sec. 106, Ch. 571, L. 1979.

13-13-114. Voter identification and marking precinct register book before elector votes — provisional voting. (1) (a) Before an elector is permitted to receive a ballot or vote, the elector shall present to an election judge a current photo identification showing the elector's name. If the elector does not present photo identification, including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification, the elector shall present a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address.

(b) An elector who provides the information listed in subsection (1)(a) may sign the precinct register and must be provided with a regular ballot to vote.

(c) If the information provided in subsection (1)(a) differs from information in the precinct register but an election judge determines that the information provided is sufficient to verify the voter's identity and eligibility to vote pursuant to 13-2-512, the elector may sign the precinct register, complete a transfer form or new registration form to correct the elector's voter registration information, and vote.

(d) An election judge shall write "transfer form" or "registration form" beside the name of any elector submitting a form.

(2) If the information presented under subsection (1) is insufficient to verify the elector's identity and eligibility to vote or if the elector's name does not appear in the precinct register, the elector may sign the precinct register and cast a provisional ballot as provided in 13-13-601.

(3) If the elector fails or refuses to sign the elector's name or if the elector is disabled and a fingerprint, an identifying mark, or a signature by a person authorized to sign for the elector pursuant to 13-1-116 is not provided, the elector may cast a provisional ballot as provided in 13-13-601.

History: En. Sec. 107, Ch. 571, L. 1979; amd. Sec. 10, Ch. 591, L. 1991; amd. Sec. 21, Ch. 475, L. 2003; amd. Sec. 3, Ch. 367, L. 2005.

13-13-115. Recording number of voters and ballots. The election administrator in each precinct shall use a precinct register, pollbook, or some other method to record the number of individuals voting and the number of ballots cast that conforms to the method prescribed by the secretary of state in accordance with rules adopted pursuant to 13-12-202.

History: En. Sec. 108, Ch. 571, L. 1979; amd. Sec. 11, Ch. 591, L. 1991; amd. Sec. 29, Ch. 414, L. 2003.

13-13-116. Paper ballots to be marked — one ballot to elector. (1) Before delivering a paper ballot to an elector, the election judges shall ensure that the ballot is marked with the words "official ballot" without part of the mark appearing on the stub, if any. The election judges shall also ensure that the ballot is marked with the name of the county, the number of the precinct, and any other information the election administrator believes necessary to distinguish the ballots from those used in any other election.

(2) Each elector must receive from the election judges one of each type of ballot being used at the election.

History: En. Sec. 109, Ch. 571, L. 1979; amd. Sec. 6, Ch. 298, L. 1987; amd. Sec. 8, Ch. 390, L. 1993; amd. Sec. 30, Ch. 414, L. 2003.

13-13-117. Method of voting. (1) (a) After marking the precinct register pursuant to 13-13-115 and receiving a ballot, an elector shall immediately retire to a voting station and prepare the elector's ballot in the manner prescribed in the instructions provided pursuant to 13-13-112.

(b) An elector who spoils the elector's ballot must be provided with another ballot in place of the spoiled ballot.

(2) (a) After the elector has completed voting, the elector shall ensure the proper disposition of the elector's ballot in accordance with instructions provided pursuant to 13-13-112.

(b) An election judge or voting system shall place the ballot in the ballot box immediately without allowing anyone to examine the ballot. Nothing other than a ballot may be put in a ballot box.

History: En. Sec. 110, Ch. 571, L. 1979; amd. Sec. 7, Ch. 298, L. 1987; amd. Sec. 2, Ch. 391, L. 1989; amd. Sec. 1, Ch. 134, L. 2001; amd. Sec. 31, Ch. 414, L. 2003; amd. Sec. 16, Ch. 273, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 273 in (1)(a) at beginning deleted "Upon receipt of a paper ballot or, if a nonpaper ballot is used" and after "13-13-115" inserted "and receiving a ballot"; in (1)(b) at beginning of first sentence substituted "An election judge or voting system shall" for "If a paper ballot was cast, an election judge shall" and near end substituted "without allowing anyone to examine" for "without opening or examining" and at beginning of second sentence deleted "Only an election judge may put a ballot in a ballot box, and"; and made minor changes in style. Amendment effective October 1, 2007.

13-13-118. Taking ballot to disabled elector. (1) The chief election judge may appoint two election judges who represent different political parties to take a ballot to an elector able to come to the premises where a polling place is located but unable to enter the polling place because of a disability. The elector may request assistance in marking his ballot as provided in 13-13-119.

(2) The judges shall have the elector sign an oath form stating he is entitled to vote and shall write in the precinct register by the elector's name "voted on the premises by oath" and sign their names.

(3) When the ballot or ballots are marked and folded, the judges shall immediately take them into the polling place and give them to the judge at the ballot box. The judge receiving the voted ballots shall distinctly announce he has "a ballot offered by (name), an elector physically unable to enter the room. Does anyone object to the reception of the ballot?" If no objection is heard, the judge shall remove the stub and place the ballot and stub in the proper boxes. Any challenge to the elector's right to vote shall be resolved as provided in Title 13, chapter 13, part 3.

History: En. Sec. 111, Ch. 571, L. 1979.

13-13-119. Aid to disabled elector. (1) When a disabled elector enters a polling place, an election judge shall ask the elector if the elector wants assistance.

(2) An election judge or an individual chosen by the disabled elector as specified in subsection (5) may aid an elector who, because of physical disability or inability to read or write, needs assistance in marking the elector's ballot.

(3) The election judges shall require a declaration of disability by the elector. The declaration must be made under oath, which must be administered by an election judge.

(4) The elector may be assisted by two judges who represent different parties. The judges shall certify on the precinct register opposite the disabled elector's name that the ballot was marked with their assistance. The judges may not reveal information regarding the ballot.

(5) Instead of assistance as provided in subsection (4), the elector may request the assistance of any individual the elector designates to the judges to aid the elector in the marking of the elector's ballot. An individual designated to assist the elector shall sign the individual's name on the precinct register beside the name of the elector assisted. The individual chosen may not be the elector's employer, an agent of the elector's employer, or an officer or agent of the elector's union.

(6) No elector other than the elector who requires assistance may divulge to anyone within the polling place the name of any candidate for whom the elector intends to vote or may ask or receive the assistance of any individual within the polling place in the preparation of the elector's ballot.

History: En. Sec. 112, Ch. 571, L. 1979; amd. Sec. 8, Ch. 298, L. 1987; amd. Sec. 4, Ch. 367, L. 2005.

13-13-120. Poll watchers — announcement of elector's name. The election judges shall permit one poll watcher from each political party to station himself close to the poll lists in a location that does not interfere with the election procedures. At the time when each elector signs his name, one of the election judges shall pronounce the name loud enough to be heard by the poll watchers. A poll watcher who does not understand the pronunciation has the right to request that the judge repeat the name. Poll watchers shall also be permitted to observe all of the vote counting procedures of the judges after the closing of the polls and all entries of the results of the elections.

History: En. Sec. 113, Ch. 571, L. 1979.

13-13-121. Additional poll watchers. A candidate, a group of candidates, or any group having an interest in the election may request the election administrator to allow additional poll

watchers at any precinct. The election administrator shall grant such requests if the number of poll watchers at the polling place will not interfere with the election procedures.

History: En. Sec. 114, Ch. 571, L. 1979.

13-13-122. Preventing obstructions. An election officer, sheriff, constable, or other peace officer may clear the passageway, prevent any obstruction, or arrest any individual obstructing the passageway to a polling place.

History: En. Sec. 115, Ch. 571, L. 1979.

Part 2 Procedure for Electors Absent From the Polling Place

13-13-201. Voting by absentee ballot — procedures. (1) A legally registered elector or provisionally registered elector is entitled to vote by absentee ballot as provided for in this part.

(2) The elector may vote absentee by:

(a) marking the ballot in the manner specified;

(b) placing the marked ballot in the secrecy envelope, free of any identifying marks;

(c) placing the secrecy envelope containing one ballot for each election being held in the return envelope;

(d) executing the affidavit printed on the return envelope; and

(e) returning the return envelope with all appropriate enclosures by regular mail, postage paid, or by delivering it to the election administrator or, pursuant to 13-13-229, to the special absentee election board.

(3) A provisionally registered elector may also enclose in the outer return envelope a copy of the elector's photo identification showing the elector's name. The photo identification may be but is not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification. If the provisionally registered elector does not enclose a photo identification, the elector may enclose a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address.

History: En. Sec. 119, Ch. 368, L. 1969; R.C.M. 1947, 23-3701; amd. Sec. 116, Ch. 571, L. 1979; amd. Sec. 1, Ch. 239, L. 1985; amd. Sec. 1, Ch. 242, L. 1997; amd. Sec. 1, Ch. 151, L. 1999; amd. Sec. 32, Ch. 414, L. 2003; amd. Sec. 25, Ch. 475, L. 2003; amd. Sec. 7, Ch. 286, L. 2005; amd. Sec. 17, Ch. 273, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 273 in lead-in of (2) after "absentee" deleted "only by paper ballot and"; in (2)(e) at end substituted "administrator or, pursuant to 13-13-229, to the special absentee election board" for "administrator of the special absentee election board established pursuant to 13-13-225"; deleted former (2)(b) that read: "(b) An elector's absentee ballot must be handled as provided in 13-13-241"; and made minor changes in style. Amendment effective October 1, 2007.

13-13-202. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 132, Ch. 368, L. 1969; R.C.M. 1947, 23-3714.

13-13-203. Repealed. Sec. 32, Ch. 273, L. 2007.

History: En. Sec. 134, Ch. 368, L. 1969; R.C.M. 1947, 23-3716(1), (2); amd. Sec. 117, Ch. 571, L. 1979; amd. Sec. 2, Ch. 239, L. 1985; amd. Sec. 33, Ch. 414, L. 2003.

13-13-204. Authority to vote in person — printing error or ballot destroyed — failure to receive ballot — effect of absentee elector's death. (1) If an elector has voted by absentee ballot but the absentee ballot contains printing errors or omissions, except that the name of a candidate who has died since the printing of the ballot and that appears on the ballot does not constitute an error or omission, the elector may vote in person in any manner at the elector's polling place.

(2) If an elector does not receive an absentee ballot or if the absentee ballot was destroyed, the elector may appear at the appropriate polling place on election day and vote in person after signing an affidavit, in the form prescribed by the secretary of state, swearing that the elector's ballot has not been received or was destroyed. The ballot must be handled as a provisional ballot under 13-15-107.

(3) If an elector votes by absentee ballot and the ballot has been mailed or otherwise returned to the election administrator but the elector dies between the time of balloting and election day, the deceased elector's ballot must be counted.

History: En. Sec. 127, Ch. 571, L. 1979; amd. Sec. 2, Ch. 120, L. 1983; amd. Sec. 9, Ch. 298, L. 1987; amd. Sec. 4, Ch. 85, L. 1997; amd. Sec. 26, Ch. 475, L. 2003; amd. Sec. 1, Ch. 359, L. 2005.

13-13-205. When ballots to be available. (1) The election administrator shall ensure that ballots are printed at least:

- (a) 30 days prior to an election for those elections held in compliance with 13-1-107(1);
- (b) 20 days prior to an election for those elections held in compliance with 13-1-104(2) and (3) and 13-1-107(2); and
- (c) 45 days prior to an election held in conjunction with a federal general election in compliance with 13-1-104(1).

(2) A ballot may not be provided to an elector for absentee voting sooner than 30 days before an election, except that an absentee ballot requested pursuant to Title 13, chapter 21, may be sent to the elector as soon as the ballot is printed.

History: En. Sec. 2, Ch. 586, L. 1983; amd. Sec. 32, Ch. 250, L. 1985; amd. Sec. 10, Ch. 298, L. 1987; amd. Sec. 34, Ch. 414, L. 2003; amd. Sec. 27, Ch. 475, L. 2003; amd. Sec. 8, Ch. 286, L. 2005; amd. Sec. 18, Ch. 273, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 273 in (1) in lead-in before "ballots" deleted "paper" and after "printed" deleted "and available for absentee voting"; inserted (2) relating to minimum time for providing a ballot; deleted former (2) that read: "(2) If paper ballots are sent more than 30 days before an election, the election administrator shall include a notice that the voter information pamphlet, when required to be distributed, will be provided pursuant to 13-27-410"; and made minor changes in style. Amendment effective October 1, 2007.

13-13-206 through 13-13-210 reserved.

13-13-211. Time period for application. (1) Except as provided in 13-13-222, 13-21-210, and subsection (2) of this section, an application for an absentee ballot must be made during a period beginning 75 days before the day of election and ending at noon on the day before the election.

(2) A qualified elector who is prevented from voting at the polls as a result of illness or health emergency occurring between 5 p.m. of the Friday preceding the election and noon on election day may request to vote by absentee ballot as provided in 13-13-212(2).

History: En. Sec. 121, Ch. 368, L. 1969; amd. Sec. 1, Ch. 145, L. 1975; R.C.M. 1947, 23-3703; amd. Sec. 118, Ch. 571, L. 1979; amd. Sec. 3, Ch. 239, L. 1985; amd. Sec. 4, Ch. 396, L. 1985; amd. Sec. 14, Ch. 200, L. 1987; amd. Sec. 12, Ch. 472, L. 1997; amd. Sec. 2, Ch. 151, L. 1999; amd. Secs. 35, 93(2)(a), Ch. 414, L. 2003; amd. Sec. 13, Ch. 130, L. 2005.

13-13-212. Application for absentee ballot — special provisions. (1) (a) Except as provided in subsection (1)(b), an elector may apply for an absentee ballot by using a standardized form provided by rule by the secretary of state or by making a written request, which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under this subsection (2) must be received by the election administrator within the time period specified in 13-13-211(2).

(3) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before

the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator.

(4) (a) When applying for an absentee ballot under this section, an elector may also request to be mailed an absentee ballot, as soon as the ballot becomes available, for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains qualified to vote and resides at the address provided in the initial application.

(b) The election administrator shall mail an address confirmation form in January and July of each year to each elector who has requested an absentee ballot for subsequent elections. The address confirmation form mailed in January is for elections to be held between February 1 following the mailing through July of the same year, and the address confirmation form mailed in July is for elections to be held between August 1 following the mailing through January of the succeeding year. The elector shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the register of electors who have requested an absentee ballot for each subsequent election.

(c) An elector who has been removed from the register may subsequently request to be mailed an absentee ballot for each subsequent election.

History: En. Sec. 122, Ch. 368, L. 1969; amd. Sec. 1, Ch. 287, L. 1975; R.C.M. 1947, 23-3704; amd. Sec. 119, Ch. 571, L. 1979; amd. Sec. 4, Ch. 239, L. 1985; amd. Sec. 12, Ch. 591, L. 1991; amd. Sec. 6, Ch. 85, L. 1997; amd. Sec. 2, Ch. 164, L. 1999; amd. Sec. 36, Ch. 414, L. 2003; amd. Secs. 14, 25, Ch. 557, L. 2003; amd. Sec. 1, Ch. 284, L. 2005; amd. Sec. 9, Ch. 286, L. 2005; amd. Sec. 11, Ch. 586, L. 2005; amd. Sec. 1, Ch. 221, L. 2007; amd. Sec. 1, Ch. 358, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 221 in (1)(a) at beginning inserted exception clause; inserted (1)(b) concerning power of attorney for absent uniformed services elector; and made minor changes in style. Amendment effective July 1, 2007.

Chapter 358 in (4)(b) in first sentence after “form” substituted “in January and July of each year” for “at least 75 days before the election” and inserted second sentence clarifying to which address confirmation forms apply. Amendment effective October 1, 2007.

Applicability: Section 2, Ch. 358, L. 2007, provided: “[This act] applies to address confirmation forms to be mailed after December 31, 2007.”

13-13-213. Transmission of application to election administrator — delivery of ballot. (1) All absentee ballot application forms must be addressed to the appropriate election official.

(2) Except as provided in subsection (4), the elector may mail the application directly to the election administrator or deliver the application in person to the election administrator. An agent designated pursuant to 13-1-116 or a third party may collect the elector's application and forward it to the election administrator.

(3) The election administrator shall compare the signature on the application with the applicant's signature on the registration card. If convinced that the individual making the application is the same as the one whose name appears on the registration card, the election administrator shall deliver the ballot to the elector in person or as otherwise provided in 13-13-214, subject to 13-13-205.

(4) In lieu of the requirement provided in subsection (2), an elector who requests an absentee ballot pursuant to 13-13-212(2) may return the application to the special absentee election board. Upon receipt of the application, the special absentee election board shall examine the signatures on the application and a copy of the voting registration card to be provided by the election administrator. If the special absentee election board believes that the applicant is the same person as the one whose name appears on the registration card, the special absentee election board shall provide a ballot to the elector, subject to 13-13-205.

History: En. Sec. 123, Ch. 368, L. 1969; R.C.M. 1947, 23-3705; amd. Sec. 120, Ch. 571, L. 1979; amd. Sec. 5, Ch. 239, L. 1985; amd. Sec. 1, Ch. 203, L. 1995; amd. Sec. 1, Ch. 367, L. 2003; amd. Sec. 15, Ch. 557, L. 2003; amd. Sec. 10, Ch. 286, L. 2005; amd. Sec. 5, Ch. 367, L. 2005; amd. Sec. 19, Ch. 273, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 273 in (3) and (4) at end inserted “subject to 13-13-205”; and made minor changes in style. Amendment effective October 1, 2007.

13-13-214. Mailing absentee ballot to elector — delivery to person other than elector. (1) (a) Except as provided in 13-13-213 and in subsection (1)(b) of this section, the election administrator shall, no sooner than authorized in 13-13-205, mail, postage prepaid, to each legally registered elector and provisionally registered elector from whom the election administrator has received a valid absentee ballot application under 13-13-211 and 13-13-212 whatever official ballots are necessary.

(b) The election administrator may deliver a ballot in person to an individual other than the elector if:

(i) the elector has designated the individual, either by a signed letter or by making the designation on the application form in a manner prescribed by the secretary of state or pursuant to 13-1-116;

(ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the ballot;

(iii) the election administrator believes that the individual receiving the ballot is the designated person; and

(iv) the designated person has not previously picked up ballots for four other electors.

(2) The election administrator shall enclose with the ballots:

(a) a form prescribed by the secretary of state that allows the elector to request absentee ballots for each subsequent federal election only or for all subsequent elections, as provided for in 13-13-212(4);

(b) a secrecy envelope, free of any marks that would identify the voter; and

(c) an envelope for the return of the ballots. The envelope must be self-addressed by the election administrator and an affirmation in the form prescribed by the secretary of state must be printed on the back of the envelope.

(3) The election administrator shall ensure that the ballots provided to an absentee elector are marked as provided in 13-13-116 and remove the stubs from the ballots, attaching the stubs to the elector's absentee ballot application.

(4) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so that it can be identified as being used by any one elector.

(5) Instructions for voting must be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or types of writing instruments that may be used to mark the absentee ballot. The instructions must include information regarding use of the secrecy envelope and use of the return envelope. The election administrator shall include a voter information pamphlet with the instructions if:

(a) a statewide ballot issue appears on the ballot mailed to the elector; and

(b) the elector requests a voter information pamphlet.

History: En. Sec. 124, Ch. 368, L. 1969; amd. Sec. 1, Ch. 246, L. 1971; amd. Sec. 2, Ch. 287, L. 1975; R.C.M. 1947, 23-3706; amd. Sec. 121, Ch. 571, L. 1979; amd. Sec. 1, Ch. 110, L. 1983; amd. Sec. 1, Ch. 119, L. 1995; amd. Sec. 2, Ch. 203, L. 1995; amd. Sec. 2, Ch. 242, L. 1997; amd. Secs. 37, 93(2)(b), Ch. 414, L. 2003; amd. Sec. 30, Ch. 475, L. 2003; amd. Sec. 2, Ch. 284, L. 2005; amd. Sec. 6, Ch. 367, L. 2005; amd. Sec. 20, Ch. 273, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 273 in (1)(a) substituted "the election administrator shall, no sooner than authorized in 13-13-205, mail" for "as soon as the official paper absentee ballots are printed, the election administrator shall immediately send by mail"; and made minor changes in style. Amendment effective October 1, 2007.

13-13-215 through 13-13-220 reserved.

13-13-221. Repealed. Sec. 91, Ch. 414, L. 2003.

History: En. Sec. 125, Ch. 368, L. 1969; amd. Sec. 3, Ch. 287, L. 1975; R.C.M. 1947, 23-3707; amd. Sec. 122, Ch. 571, L. 1979; amd. Sec. 6, Ch. 239, L. 1985; amd. Sec. 3, Ch. 242, L. 1997.

13-13-222. Marking ballot before election day. (1) As soon as the official ballots are available pursuant to 13-13-205, the election administrator shall permit an elector to apply for, receive, and mark an absentee ballot before election day by appearing in person at the office of the election administrator and marking the ballot in a voting station area designated by the election administrator.

(2) The provisions of this chapter apply to voting under this section.

(3) If the ballot is marked before the election administrator, the election administrator shall deal with it as provided in 13-13-231.

History: En. Sec. 130, Ch. 368, L. 1969; amd. Sec. 4, Ch. 287, L. 1975; R.C.M. 1947, 23-3712; amd. Sec. 123, Ch. 571, L. 1979; amd. Sec. 1, Ch. 586, L. 1983; amd. Sec. 7, Ch. 239, L. 1985; amd. Sec. 3, Ch. 151, L. 1999; amd. Sec. 38, Ch. 414, L. 2003.

13-13-223 and 13-13-224 reserved.

13-13-225. Special absentee election boards — members — appointment. (1) The election administrator shall designate and appoint a number of special absentee election boards as needed to serve in various places to deliver ballots to electors who are entitled to vote by absentee ballot as provided in 13-13-229.

(2) In a partisan election, each special absentee election board must consist of two members, one from each of the two political parties receiving the highest votes in the state during the last preceding general election. Board members shall reside in the county in which they serve.

(3) A member of a special absentee election board may not be a candidate or a spouse, ascendant, descendant, brother, or sister of a candidate or of a candidate's spouse or the spouse of any one of these if the candidate's name appears on a ballot in the county.

History: En. Sec. 10, Ch. 239, L. 1985; amd. Sec. 4, Ch. 242, L. 1997; amd. Sec. 4, Ch. 151, L. 1999.

13-13-226. Manner of selection. The election administrator shall make appointments to the special absentee election board from lists of qualified electors prepared in substantially the same manner as provided in 13-4-102. If the list is insufficient to make all the appointments required, the election administrator may appoint any qualified registered elector from the county. The election administrator may refuse for cause to appoint or may for cause remove a member of a special absentee election board.

History: En. Sec. 11, Ch. 239, L. 1985.

13-13-227. Oath of board members. Before assuming any of his responsibilities under this part, each member of a special absentee election board must take and subscribe the official oath in the same manner as prescribed for an election judge in 13-4-105.

History: En. Sec. 12, Ch. 239, L. 1985.

13-13-228. Compensation. (1) Each member of a special absentee election board is entitled to compensation for the number of hours worked.

(2) Each member of a special absentee election board is entitled to full reimbursement for actual travel expenses incurred while delivering ballots on election day.

(3) The election administrator shall pay each member the same compensation and certify amounts due in the same manner as for an election judge as provided for in 13-4-106(1).

History: En. Sec. 13, Ch. 239, L. 1985.

13-13-229. Voting performed before special absentee election board. (1) Pursuant to 13-13-212(2), the elector may request that a special absentee election board personally deliver a ballot to the elector.

(2) The manner and procedure of voting by use of an absentee ballot under this section must be the same as provided in 13-13-201, except that the elector shall hand the marked ballot in the sealed return envelope to the special absentee election board, and the board shall deliver the sealed return envelope to the election administrator or to the election judges of the precinct in which the elector is registered.

(3) An absentee ballot cast by a qualified elector pursuant to this section may not be rejected by the election administrator if the ballot was in the possession of the board before the time designated for the closing of the polls.

(4) An elector who needs assistance in marking the elector's ballot because of physical incapacity or inability to read or write may receive assistance from the special absentee election board appointed to personally deliver the ballot. Any assistance given an elector pursuant to this section must be provided in substantially the same manner as required in 13-13-119.

History: En. Sec. 14, Ch. 239, L. 1985; amd. Sec. 5, Ch. 242, L. 1997; amd. Sec. 5, Ch. 151, L. 1999; amd. Sec. 39, Ch. 414, L. 2003; amd. Sec. 17, Ch. 557, L. 2003.

13-13-230. Authorization to increase county mill levy. Subject to 15-10-420, a county may levy an amount necessary to finance the additional cost of administering a special absentee election board program pursuant to 13-13-225 through 13-13-229. The mill levy may not be

included as part of any existing mill levy or special mill levy assessed by the county. The amount of any mill levy adopted under this section must be reasonably related to the actual cost of providing services as required by 13-13-225 through 13-13-229.

History: En. Sec. 15, Ch. 239, L. 1985; amd. Sec. 79, Ch. 584, L. 1999; amd. Sec. 91, Ch. 574, L. 2001.

13-13-231. Disposition of marked ballot upon receipt by election administrator.

(1) Upon receipt of the voted absentee ballot, the election administrator shall immediately attach the elector's application to the unopened return envelope and mark the precinct number for delivery.

(2) The election administrator shall safely keep the absentee ballots in the election administrator's office until delivered by the election administrator to the election judges.

History: En. Sec. 126, Ch. 368, L. 1969; amd. Sec. 36, Ch. 365, L. 1977; R.C.M. 1947, 23-3708; amd. Sec. 124, Ch. 571, L. 1979; amd. Sec. 6, Ch. 242, L. 1997.

13-13-232. Delivery of ballots and secrecy envelopes to election judges — ballots to be rejected. (1) If an absentee ballot is received prior to delivery of the official ballots to the election judges, the election administrator shall process it according to 13-13-241 and then deliver the unopened secrecy envelope to the judges at the same time that the ballots are delivered.

(2) If an absentee ballot is received after the official ballots are delivered to the election judges but prior to the close of the polls, the election administrator shall process it according to 13-13-241 and shall then immediately deliver the unopened secrecy envelope to the judges.

(3) If the election administrator receives an absentee ballot for which an application or request was not made or received as required by this part, the election administrator shall endorse upon the elector's envelope the date and exact time of receipt and the words "to be rejected". Absentee ballots endorsed in this manner must be handled in the same manner as provided in 13-15-108(1).

History: En. Sec. 127, Ch. 368, L. 1969; amd. Sec. 4, Ch. 254, L. 1971; R.C.M. 1947, 23-3709(1) thru (3); amd. Sec. 125, Ch. 571, L. 1979; amd. Sec. 8, Ch. 239, L. 1985; amd. Sec. 7, Ch. 242, L. 1997; amd. Sec. 6, Ch. 151, L. 1999; amd. Sec. 31, Ch. 475, L. 2003; amd. Sec. 11, Ch. 286, L. 2005.

13-13-233. Issuing and recording absentee ballots — certificate to election judges.

(1) Absentee ballots must be official numbered paper ballots beginning with ballot number 1 and following consecutively according to the number of applications for absentee ballots.

(2) The election administrator shall keep a record of all absentee ballots issued.

(3) When the election administrator delivers the voted absentee ballots pursuant to 13-13-232(1), the election administrator shall also provide a certificate stating:

(a) the ballot numbers of the absentee ballots mailed or transmitted pursuant to 13-13-214 or 13-21-207, delivered pursuant to 13-13-229, or marked in person pursuant to 13-13-222;

(b) the number of ballots to be reserved for late absentee voting pursuant to 13-13-211(2); and

(c) the names of the electors within the precinct to whom the ballots were provided.

(4) The chief election judge shall post in a conspicuous location at the polling place a list of the names of electors appearing on the certificate required under subsection (3).

History: En. Sec. 128, Ch. 368, L. 1969; R.C.M. 1947, 23-3710; amd. Sec. 126, Ch. 571, L. 1979; amd. Sec. 3, Ch. 120, L. 1983; amd. Sec. 42, Ch. 414, L. 2003; amd. Sec. 12, Ch. 286, L. 2005.

13-13-234. Duty of election judges — pollbook. (1) The election judges, at the opening of the polls, shall:

(a) note on the pollbook opposite the appropriate ballot numbers the fact that the ballots were issued as absentee ballots; and

(b) reserve the numbers for electors who may vote late under 13-13-211(2).

(2) The election judges shall insert only the name of the elector entitled to each particular number according to the certificate provided by the election administrator pursuant to 13-13-233(3) and the number of the elector's ballot.

History: En. Sec. 129, Ch. 368, L. 1969; amd. Sec. 37, Ch. 365, L. 1977; R.C.M. 1947, 23-3711; amd. Sec. 128, Ch. 571, L. 1979; amd. Sec. 9, Ch. 239, L. 1985; amd. Sec. 43, Ch. 414, L. 2003.

13-13-241. Examination of absentee ballot return envelopes — deposit of absentee and unvoted ballots. (1) (a) After an absentee ballot is received, an election

administrator shall compare the signature of the elector on the absentee ballot request with the signature on the absentee ballot return envelope.

(b) If the elector is legally registered and the signature on the return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall handle the ballot as a regular ballot.

(c) (i) If the elector is provisionally registered and the signature on the return envelope matches the signature on the absentee ballot application, the election administrator or an election judge shall open the outer return envelope and determine whether the elector's voter identification information, if enclosed pursuant to 13-13-201, is sufficient pursuant to rules adopted under 13-2-109 to legally register the elector.

(ii) If the voter identification information is sufficient to legally register the elector, the ballot must be handled as a regular ballot.

(iii) If voter identification information was not enclosed or the information enclosed is insufficient to legally register the elector, the ballot must be handled as a provisional ballot under 13-15-107.

(2) If a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.

(3) In a primary election, unvoted party ballots must be separated from the secrecy envelopes and handled without being removed from their enclosure envelopes.

(4) If an elector's ballot is to be handled as a provisional ballot, the election administrator shall notify the absentee elector by mail or by the most expedient method available under rules adopted by the secretary of state that the elector's identification information was insufficient and that the elector's ballot will be treated as a provisional ballot until the elector provides sufficient information, pursuant to rules adopted by the secretary of state. If the elector is notified by mail, the election administrator shall provide a self-addressed return envelope along with a description of the information necessary for the absentee elector to reclassify the provisional ballot as a regular ballot.

(5) If the signature on the absentee ballot return envelope does not match the signature on the absentee ballot request form, the absentee ballot must be rejected. The election administrator, without opening the absentee ballot return envelope, shall mark across it the reason for rejection. Unopened rejected absentee ballot return envelopes must be handled in the same manner as provided for rejected ballots in 13-15-108(1).

(6) After receiving an absentee ballot secrecy envelope, without opening the secrecy envelope, the election judges shall on election day place the secrecy envelope in the proper ballot box.

History: En. Sec. 131, Ch. 368, L. 1969; amd. Sec. 5, Ch. 287, L. 1975; amd. Sec. 38, Ch. 365, L. 1977; R.C.M. 1947, 23-3713(1) thru (6); amd. Sec. 129, Ch. 571, L. 1979; Sec. 13-13-235, MCA 1979; redes. 13-13-241 by Code Commissioner, 1979; amd. Sec. 11, Ch. 298, L. 1987; amd. Sec. 8, Ch. 242, L. 1997; amd. Sec. 32, Ch. 475, L. 2003; amd. Sec. 13, Ch. 286, L. 2005; amd. Sec. 21, Ch. 273, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 273 in (1)(a) at beginning substituted "After" for "As soon as". Amendment effective October 1, 2007.

13-13-244. Opening of return envelopes after deposit. If a return envelope containing an absentee ballot has been deposited unopened in the ballot box and the envelope has not been marked rejected, the return envelope must be processed as provided in 13-13-241.

History: En. Sec. 133, Ch. 368, L. 1969; amd. Sec. 39, Ch. 365, L. 1977; R.C.M. 1947, 23-3715; Sec. 13-16-239, MCA 1979; redes. 13-13-244 by Code Commissioner; amd. Secs. 45, 93(3)(d), Ch. 414, L. 2003.

13-13-270. Absentee voting provisions for United States electors supersede. A provision of this chapter may not be interpreted to conflict with Title 13, chapter 21.

History: En. Sec. 9, Ch. 557, L. 2003.

Part 3 Challenges

13-13-301. Challenges. (1) An elector's right to vote may be challenged at any time by any registered elector by the challenger filling out and signing an affidavit stating the grounds of the

challenge and providing any evidence supporting the challenge to the election administrator or, on election day, to an election judge.

(2) A challenge may be made on the grounds that the elector:

(a) is of unsound mind, as determined by a court;

(b) has voted before in that election;

(c) has been convicted of a felony and is serving a sentence in a penal institution;

(d) is not registered as required by law;

(e) is not 18 years of age or older;

(f) has not been, for at least 30 days, a resident of the county in which the elector is offering to vote; or

(g) is a provisionally registered elector whose status has not been changed to a legally registered voter.

(3) When a challenge has been made under this section:

(a) prior to the close of registration under 13-2-301, the election administrator shall question the challenger and the challenged elector and may question other persons to determine whether the challenge is sufficient or insufficient to cancel the elector's registration under 13-2-402; or

(b) after the close of registration or on election day, the election administrator or, on election day, the election judge shall allow the challenged elector to cast a provisional paper ballot, which must be handled as provided in 13-15-107.

(4) (a) In response to a challenge, the challenged elector may fill out and sign an affidavit to refute the challenge and swear that the elector is eligible to vote.

(b) If the challenge was not made in the presence of the elector being challenged, the election administrator or election judge shall notify the challenged elector as soon as possible of who made the challenge and the grounds of the challenge and explain what information the elector may provide to respond to the challenge. The election administrator or, on election day, the election judge shall also provide to the challenged elector a copy of the challenger's affidavit and any supporting evidence provided. If the challenge is made more than 5 days before an election, "as soon as possible", as used in this subsection (4)(b), means no later than 5 days after the challenge.

(5) The secretary of state shall adopt rules to implement the provisions of this section and shall provide standardized affidavit forms for challengers and challenged electors.

History: (1)En. Sec. 34, Ch. 368, L. 1969; amd. Sec. 11, Ch. 365, L. 1977; Sec. 23-3015, R.C.M. 1947; (2)En. Sec. 111, Ch. 368, L. 1969; amd. Sec. 33, Ch. 365, L. 1977; Sec. 23-3611, R.C.M. 1947; R.C.M. 1947, 23-3015(3), 23-3611; amd. Sec. 132, Ch. 571, L. 1979; amd. Sec. 33, Ch. 475, L. 2003; amd. Sec. 12, Ch. 586, L. 2005.

Part 6 Provisional Voting — Rulemaking

13-13-601. Provisional voting in person. (1) Before being given a ballot, an elector casting a provisional ballot:

(a) must be given information, in a form prescribed by the secretary of state, explaining how to vote provisionally, what information must be provided by the elector to verify the elector's eligibility, and how to determine whether the elector's provisional ballot is or is not counted and, if not, the reasons why;

(b) shall sign an affirmation in a form prescribed by the secretary of state swearing that, to the best of the elector's knowledge, the elector is eligible to vote in the election and precinct and is aware of the penalty for false swearing; and

(c) shall cast and return the provisional ballot to an election judge, who shall place the ballot into an envelope prescribed by the secretary of state for provisional ballots.

(2) A provisional ballot must be handled as provided in 13-15-107.

(3) An elector making a false affirmation under this section is subject to the penalty for false swearing provided in 45-7-202.

History: En. Sec. 22, Ch. 475, L. 2003.

13-13-602. Fail-safe and provisional voting by mail. (1) To ensure the election administrator has information sufficient to determine the elector's eligibility to vote, an elector voting by mail may enclose in the outer return envelope, together with the voted ballot in the

secrecy envelope, a copy of a current and valid photo identification with the elector's name or a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address.

(2) If a provisionally registered elector voting by mail does not enclose with the ballot the information described in subsection (1), if the information provided under subsection (1) is invalid or insufficient to verify the elector's eligibility, or if the elector's name does not appear on the precinct register, the elector's ballot must be handled as a provisional ballot under 13-15-107.

History: En. Sec. 23, Ch. 475, L. 2003.

13-13-603. Rulemaking on provisional voting, absentee ballots, and challenged ballots. (1) The secretary of state shall adopt rules to:

(a) implement the provisions of 13-13-114 and this part concerning verification of voter identification and eligibility;

(b) establish standards for determining the sufficiency of information provided on absentee ballot return envelopes pursuant to 13-13-241;

(c) implement the provisions of 13-15-107 on the handling and counting of provisional and challenged ballots, including the establishment of procedures for verifying voter registration and eligibility information with respect to the ballots.

(2) The rules may not conflict with rules established under 13-2-109.

History: En. Sec. 24, Ch. 475, L. 2003.

CHAPTER 14 NONPARTISAN ELECTIONS

Part 1 General Provisions

13-14-111. Application of general laws. Candidates for nonpartisan offices, including judicial offices, shall be nominated and elected according to the provisions of this title except as otherwise provided in this chapter.

History: En. Sec. 139, Ch. 571, L. 1979.

13-14-112. Declarations for nomination — fee. (1) Nonpartisan candidates shall file declarations for nomination as required by the primary election laws in a form prescribed by the secretary of state except as provided in 13-14-113. A candidate may not file for more than one public office.

(2) Declarations may not indicate political affiliation. The candidate may not state in the declaration any principles or measures that the candidate advocates or any slogans.

(3) Each individual filing a declaration shall pay the fee prescribed by law for the position that the individual seeks.

(4) Declarations must be filed in the office of the secretary of state or the appropriate election administrator as provided in 13-10-201. Time of filing must be the same as provided in 13-10-201.

History: En. Sec. 140, Ch. 571, L. 1979; amd. Sec. 34, Ch. 475, L. 2003; amd. Sec. 13, Ch. 586, L. 2005.

13-14-113. Filing for offices without salary or fees. (1) Candidates for nonpartisan offices for which a salary or fees are not paid shall file with the appropriate official a petition for nomination containing the same information and the oath of the candidate required for a declaration of nomination in a form prescribed by the secretary of state.

(2) The petition must contain the signatures of registered electors of the election district in which the office will be on the ballot. The number of signatures must be equal to 5% of the total vote cast for the successful candidate for that office at the last general election, but may not be less than five signatures.

(3) The number of signatures necessary for a petition for nomination for an office not previously on the ballot or for which the election district boundaries have changed since the last general election must be determined by the secretary of state.

(4) Petitions for nomination must be filed at the same time provided in 13-10-201 for other candidates and offices.

(5) A candidate may not file for more than one public office.

History: En. Sec. 141, Ch. 571, L. 1979; amd. Sec. 35, Ch. 475, L. 2003; amd. Sec. 14, Ch. 586, L. 2005.

13-14-114. Register of candidates. On receipt of a declaration or petition, the secretary of state or election administrator shall, if a register is kept, make an entry in the register of candidates for nomination, on a page different from entries made for candidates of political parties.

History: En. Sec. 142, Ch. 571, L. 1979; amd. Sec. 2, Ch. 99, L. 1987.

13-14-115. Preparation and distribution of nonpartisan primary ballots — determination on conducting primary. (1) The election administrators shall arrange, prepare, and distribute primary ballots for nonpartisan offices, designated “nonpartisan primary ballots”. The ballots must be arranged and prepared as provided in 13-10-209 and be without political designation.

(2) (a) The election administrator of a political subdivision may determine that a primary election need not be held if:

(i) the number of candidates for an office exceeds three times the number to be elected to that office in no more than one-half of the offices on the ballot; and

(ii) the number of candidates in excess of three times the number to be elected is not more than one for any office on the ballot.

(b) If the election administrator determines that a primary election need not be held pursuant to subsection (2)(a), the administrator shall give notice to the governing body that a primary election will not be held.

(3) The governing body may require that a primary election be held if it passes a resolution not more than 10 days after the close of filing by candidates for election stating that a primary election must be held.

History: (1), (2) En. Sec. 143, Ch. 571, L. 1979; (3) En. Sec. 1, Ch. 359, L. 1979; amd. Sec. 1, Ch. 123, L. 1985; amd. Sec. 13, Ch. 591, L. 1991; amd. Sec. 1, Ch. 135, L. 1995; amd. Sec. 46, Ch. 414, L. 2003.

13-14-116. Counting and canvassing of nonpartisan ballots. Nonpartisan ballots must be counted and canvassed as provided for in chapter 15.

History: En. Sec. 144, Ch. 571, L. 1979; amd. Sec. 3, Ch. 391, L. 1989; amd. Sec. 47, Ch. 414, L. 2003.

13-14-117. Placing names on ballots for general election. (1) Except as provided in subsection (2), candidates for nomination equal to twice the number to be elected at the general election who receive the highest number of votes cast at the primary are the nominees for the office. If the number of candidates is not more than twice the number to be elected, then all candidates are nominees for the office.

(2) If, pursuant to 13-14-115(2), a primary election is not held, then all candidates who filed for an office are nominees for the office.

History: En. Sec. 145, Ch. 571, L. 1979; amd. Sec. 2, Ch. 135, L. 1995; amd. Sec. 48, Ch. 414, L. 2003.

13-14-118. Vacancies among nominees after nomination and before general election. (1) If after the primary election a candidate is not able to run for the office for any reason, the vacancy must be filled by the candidate next in rank in number of votes received in the primary election.

(2) If a vacancy for a nonpartisan nomination cannot be filled as provided in subsection (1) and the vacancy occurs no later than 75 days before the general election, a 10-day period for accepting declarations for nomination or statements of candidacy and nominating petitions for the office must be declared by:

(a) the governor for national, state, judicial district, legislative, or any multicounty district office;

(b) the governing body of the appropriate political subdivision for all other offices.

(3) The names of the candidates who filed as provided in subsection (2) must be certified and must appear on the general election ballot in the same manner as candidates nominated in the primary.

(4) If the vacancy occurs later than 75 days before the general election and a qualified individual is not elected to the office at the general election, the office is vacant and must be filled as provided by law.

History: En. Sec. 146, Ch. 571, L. 1979; amd. Sec. 33, Ch. 250, L. 1985; amd. Sec. 49, Ch. 414, L. 2003.

CHAPTER 15 CANVASSING, RETURNS, AND CERTIFICATES

Part 1 General Provisions

13-15-101. Votes to be publicly counted — return forms. (1) Any official vote count must be public and continue without adjournment until completed and the result is publicly declared.

(2) Immediately after all the ballots are counted by precinct, the election judges shall copy the total votes cast for each candidate and for and against each proposition on the return forms furnished by the election administrator.

(3) The election judges shall immediately post one of the return forms at the place of counting and return a copy to the election administrator. Both forms must be signed by all the election judges completing the count.

History: En. Secs. 88, 171, Ch. 368, L. 1969; R.C.M. 1947, 23-3505, 23-4001; amd. Sec. 151, L. 1979; amd. Sec. 1, Ch. 100, L. 1987; amd. Sec. 13, Ch. 298, L. 1987; amd. Sec. 51, Ch. 414, L. 2003.

13-15-102. Defect in form of returns to be disregarded. No declaration of an election result, commission, or certificate shall be withheld because of a defect or informality in the returns of any election if it can be determined with reasonable certainty the office intended and the person elected.

History: En. Sec. 189, Ch. 368, L. 1969; R.C.M. 1947, 23-4019.

13-15-103. Renumbered 13-15-207. Code Commissioner, 2003.

13-15-104. Absentee ballot counting board. (1) The election administrator shall:

(a) give special instructions to any absentee ballot counting board appointed under 13-15-112 on the proper procedures for counting the absentee ballots; and

(b) provide the forms and supplies necessary for the board to perform its duties.

(2) The absentee ballot counting board shall:

(a) be sequestered in a room separate from where ballots are being cast;

(b) at any time prior to the closing of the polls but not before the polls open, start the count of the absentee votes cast; and

(c) follow the procedures outlined in 13-13-241 and 13-15-207 for the counting of the votes cast.

(3) An election judge or other individual having access to any results of early counting may not disclose the information while the polls are open and must remain sequestered until the closing of the polls.

(4) The absentee ballot counting board shall take the oath and sign the affirmation specified in 13-15-207(4).

History: En. Sec. 5, Ch. 120, L. 1983; amd. Sec. 14, Ch. 298, L. 1987; amd. Sec. 53, Ch. 414, L. 2003.

13-15-105. Notices relating to absentee ballot counting board. (1) Whenever an absentee ballot counting board is appointed under 13-15-112, the election administrator shall:

(a) publish in the contracted newspaper of the county as provided in 7-5-2411 a notice indicating the method that will be used for counting absentee ballots; and

(b) post in a conspicuous location at the office of the election administrator, by 5 p.m. of the day before an election, a notice that indicates the place and time that the counting board for absentee ballots will meet on election day.

(2) If the count will begin while the polls are open, the notice required under subsection (1) must inform the public that any person observing the procedures of the counting board must be

sequestered with the board until the polls are closed and is required to take the oath provided in 13-15-207(4).

History: En. Sec. 6, Ch. 120, L. 1983; amd. Sec. 54, Ch. 414, L. 2003.

13-15-106. Counting of absentee ballot for deceased joint candidate in general election. (1) An absentee ballot voted in a general election, as provided in subsection (2) or (3), for a candidate for governor or lieutenant governor who dies after printing of the ballot but before the election must be counted as provided in subsection (2) or (3).

(2) A vote for a deceased candidate for governor must be counted as a vote for the lieutenant governor candidate as governor and as a vote for the candidate chosen pursuant to 13-10-328 for lieutenant governor.

(3) A vote for a deceased candidate for lieutenant governor must be counted as a vote for the candidate chosen pursuant to 13-10-328 for lieutenant governor.

History: En. Sec. 5, Ch. 85, L. 1997.

13-15-107. Handling and counting provisional and challenged ballots. (1) To verify eligibility to vote, a provisionally registered elector who casts a provisional ballot has until 5 p.m. on the day after the election to provide valid identification information either in person, by facsimile, by electronic mail, or by mail postmarked no later than the day after the election.

(2) (a) If a legally registered elector casts a provisional ballot because the elector failed to provide sufficient identification as required pursuant to 13-13-114(1)(a), the election administrator shall compare the elector's signature on the affirmation required under 13-13-601 to the elector's signature on the elector's voter registration card.

(b) If the signatures match, the election administrator shall handle the ballot as provided in subsection (6).

(c) If the signatures do not match, the ballot must be rejected and handled as provided in 13-15-108.

(3) A provisional ballot must be counted if the election administrator verifies the elector's eligibility pursuant to rules adopted under 13-13-603. However, if the election administrator cannot verify the elector's eligibility under the rules, the elector's provisional ballot must be rejected and handled as provided in 13-15-108. If the ballot is provisional because of a challenge and the challenge was made on the grounds that the elector is of unsound mind or serving a felony sentence in a penal institution, the elector's provisional ballot must be counted unless the challenger provides documentation by 5 p.m. on the day after the election that a court has established that the elector is of unsound mind or that the elector has been convicted and sentenced and is still serving a felony sentence in a penal institution.

(4) The election administrator shall provide an elector who cast a provisional ballot but whose ballot was not counted with the reasons why the ballot was not counted.

(5) A provisional ballot cast by an elector whose voter information is verified before 5 p.m. on the day after the election must be removed from its provisional envelope, grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other ballot.

History: En. Sec. 36, Ch. 475, L. 2003; amd. Sec. 15, Ch. 286, L. 2005; amd. Sec. 15, Ch. 586, L. 2005; amd. Sec. 22, Ch. 273, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 273 in (1) at end after "provisional ballot" substituted provisions on providing valid identification for "in person shall provide information to the election administrator as listed below:

(a) present in person at the office of the election administrator by 5 p.m. on the day after the election a photo identification or other identifying document as described in 13-13-114(1)(a);

(b) send by facsimile or electronic mail by 5 p.m. on the day after the election a copy or scanned document that meets the identification requirements of 13-13-114(1)(a);

(c) mail a nonreturnable copy or nonreturnable original document described in 13-13-114(1)(a) in a self-addressed return envelope provided by the election administrator. If the elector mails a document, the postmark on the envelope must be for the day of the election or the day following the election.

(d) if applicable, the information to respond to a challenge under 13-13-301"; deleted former (3) that read: "(3) The election administrator shall determine prior to an election whether an absentee voter has provided sufficient identification to allow a ballot to be counted. If the information is insufficient, the election administrator shall follow procedures described in 13-13-241 to allow an absentee elector who failed to provide proper identifying information in the outer return envelope to verify eligibility to vote. An absentee elector whose ballot is determined to be provisional has until 5 p.m. on the day after the election to provide valid identification information either in person, by facsimile,

by electronic mail, or by mail postmarked on the day of the election or the day after the election"; and made minor changes in style. Amendment effective October 1, 2007.

13-15-108. Rejected ballots — handling provided by rule. (1) All rejected absentee ballots, the absentee ballot applications, and all absentee ballot return envelopes must be handled and marked as provided under rules adopted by the secretary of state.

(2) The unopened absentee ballot envelope of an elector who has voted in person as provided in 13-13-204 must be handled and marked as provided under rules adopted by the secretary of state.

(3) After being handled and marked as provided in this section, all rejected ballots must be placed in a package or container in which the voted ballots are to be placed and the package or container must be sealed, dated, and marked as provided under rules adopted by the secretary of state. After a package or container is sealed pursuant to this subsection (3), a package or container may not be opened without a court order.

History: En. Sec. 131, Ch. 368, L. 1969; amd. Sec. 5, Ch. 287, L. 1975; amd. Sec. 38, Ch. 365, L. 1977; R.C.M. 1947, 23-3713(7) thru (9); amd. Sec. 131, Ch. 571, L. 1979; Sec. 13-13-236, MCA 1979; reds. 13-13-243 by Code Commissioner, 1979; amd. Sec. 4, Ch. 120, L. 1983; amd. Sec. 14, Ch. 286, L. 2005; amd. Sec. 2, Ch. 359, L. 2005; Sec. 13-13-243, MCA 2003; reds. 13-15-108 by Sec. 20, Ch. 286, L. 2005.

13-15-109 and 13-15-110 reserved.

13-15-111. Write-in elections — general election. (1) An individual elected by having the individual's name written in at the general election and receiving the largest number of votes counted as provided in 13-15-206(5) shall:

(a) file with the secretary of state or election administrator, not later than 10 days after the official canvass, a written declaration indicating the individual's acceptance of the position for which elected;

(b) comply with the provisions of 13-37-225; and

(c) pay the required filing fee or, if indigent, comply with 13-10-203.

(2) If an individual fails to comply with the requirements in subsection (1), the individual may not assume the position for which elected.

History: En. Sec. 4, Ch. 298, L. 1987; amd. Sec. 14, Ch. 591, L. 1991; amd. Sec. 37, Ch. 475, L. 2003; amd. Sec. 16, Ch. 586, L. 2005.

13-15-112. Appointment of counting boards. To count votes in any election under this title, when election judges are appointed under 13-4-101, each county's governing body shall designate three of the election judges to act as a counting board. The governing body may also designate three of the election judges to act as an absentee ballot counting board under 13-15-104.

History: En. Sec. 1, Ch. 414, L. 2003.

Part 2 Vote Count Procedures

13-15-201. Preparation for count. (1) Subject to 13-10-311, to prepare for a manual or automatic count of ballots, the counting board or, if appointed, the absentee counting board shall take ballots out of the box to determine whether each ballot is single.

(2) An absentee ballot must be rejected and handled as provided in 13-15-108 if in the envelope there is more than one voted ballot for each election.

(3) The board shall count all ballots to ensure that the total number of ballots corresponds with the total number of names in the pollbook.

(4) If the board cannot reconcile the total number of ballots with the pollbook, the board shall submit to the election administrator a written report stating how many ballots were missing or in excess and any reason of which they are aware for the discrepancy. Each judge on the board shall sign the report.

(5) A ballot that is not marked as official is void and may not be counted unless all judges on the board agree that the marking is missing because of an error by election officials, in which case the ballot must be marked "unmarked by error" on the back and must be initialed by all judges.

(6) If two or more ballots are folded or stuck together to look like a single ballot, they must be laid aside until the count is complete. The counting board shall compare the count with the

pollbooks, and if a majority believes that the ballots folded together were voted by one elector, the ballots must be rejected and handled as provided in 13-15-108, otherwise they must be counted.

History: En. Sec. 172, Ch. 368, L. 1969; R.C.M. 1947, 23-4002; amd. Sec. 152, Ch. 571, L. 1979; amd. Sec. 9, Ch. 242, L. 1997; amd. Sec. 55, Ch. 414, L. 2003; amd. Sec. 16, Ch. 286, L. 2005; amd. Sec. 23, Ch. 273, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 273 in (1) near middle substituted "count of ballots, the counting board or, if appointed, the absentee counting board shall take ballots out of the box" for "count of paper ballots before or after the close of the polls, the counting board of election judges designated under 13-15-112 shall take ballots out of the box unopened"; deleted former (1)(b) that read: "(b) If an absentee ballot counting board has been appointed pursuant to 13-15-112, the absentee ballots must be delivered to the absentee ballot counting board and counted as provided in 13-15-104. If an absentee ballot counting board has not been appointed, the regular counting board shall, subject to 13-13-244, remove each absentee ballot secrecy envelope and open it to determine whether the ballot for each election is single"; in (3), (4), and (5) substituted "board" for "counting board"; deleted former (2) that read: "(2) For nonpaper ballots, the counting board shall prepare for the official count in a manner prescribed by the secretary of state pursuant to 13-17-211"; and made minor changes in style. Amendment effective October 1, 2007.

13-15-202. Repealed. Sec. 91, Ch. 414, L. 2003.

History: En. Secs. 134, 173, Ch. 368, L. 1969; R.C.M. 1947, 23-3716(3), 23-4003; amd. Sec. 153, Ch. 571, L. 1979; amd. Sec. 4, Ch. 391, L. 1989; amd. Sec. 3, Ch. 143, L. 1995; amd. Sec. 2, Ch. 129, L. 1999; amd. Sec. 3, Ch. 15, L. 2001.

13-15-203. Repealed. Sec. 19, Ch. 286, L. 2005.

History: En. Sec. 174, Ch. 368, L. 1969; R.C.M. 1947, 23-4004.

13-15-204. Signing and certifying pollbook. Immediately after the votes are counted and the ballots sealed up, the pollbook shall be signed and certified to by the election judges in a form prescribed by the secretary of state.

History: En. Sec. 175, Ch. 368, L. 1969; R.C.M. 1947, 23-4005; amd. Sec. 154, Ch. 571, L. 1979.

13-15-205. Items to be delivered to election administrator by election judges — disposition of other items. (1) Before they adjourn, the election judges shall enclose in a strong envelope or package, securely fastened:

- (a) the precinct register;
- (b) the list of individuals challenged;
- (c) the pollbook;
- (d) both of the tally sheets.

(2) The election judges shall enclose in a separate package or envelope, securely sealed, all unused ballots with the numbered stubs attached.

(3) The election judges shall enclose in a separate package or envelope, securely sealed, all ballots voted, including those not counted or allowed, and detached stubs from all counted or rejected absentee ballots. This envelope shall be endorsed on the outside "ballots voted". At the primary election the unvoted party ballots shall be enclosed in a separate package or envelope, securely sealed, and marked on the outside "unvoted ballots".

(4) Each election judge shall write his name across all seals.

(5) The return form provided for in 13-15-101 shall be returned with the items provided for in this section but may not be sealed in any of the packages.

(6) The envelopes or packages required by this section shall be delivered to the election administrator by the chief election judge or another judge appointed by the chief judge in the manner ordered by the election administrator.

(7) The election administrator shall instruct the chief election judge in writing on the proper disposition of all other election materials and supplies.

History: En. Sec. 176, Ch. 368, L. 1969; R.C.M. 1947, 23-4006; amd. Sec. 155, Ch. 571, L. 1979.

13-15-206. Counting votes — uniformity — rulemaking — definitions. (1) When conducting vote counts as provided by law, a counting board, absentee ballot counting board, or recount board shall count and determine the validity of each vote in a uniform manner as provided in this section.

(2) A manual count or recount of votes must be conducted as follows:

(a) One election judge on the board shall read the ballot while the two other judges on the board shall each record on an official tally sheet the number of valid votes cast for each individual or ballot issue. Write-in votes must be counted in accordance with rules adopted pursuant to

subsection (7). If a vote has not been cast according to instructions, the vote must be considered questionable and the entire ballot must be set aside and votes on the ballot must be handled as provided in subsection (4).

(b) (i) After the vote count is complete, the tally sheets of the two judges recording the votes must be compared.

(ii) If the two tallies match, the judges shall record in the pollbook:

(A) the names of all individuals who received votes;

(B) the offices for which individuals received votes;

(C) the total votes received by each individual as shown by the tally sheets; and

(D) the total votes received for or against each ballot issue, if any.

(iii) If the tallies do not match, the count must be conducted again as provided in this subsection (2) until the two tallies match.

(3) (a) When a voting system is counting votes:

(i) if a vote is recognized and counted by the system, it is a valid vote;

(ii) if a vote is not recognized and counted by the system, it is not a valid vote;

(iii) write-in votes must be counted in accordance with rules adopted pursuant to subsection (7).

(b) If the voting system cannot process the ballot because of the ballot's condition or if the voting system registers an unvoted ballot or an overvote, which must be considered a questionable vote, the entire ballot must be set aside and the votes on the ballot must be counted as provided in subsection (4).

(c) If an election administrator or counting board has reason to believe that a voting system is not functioning correctly, the election administrator shall follow the procedures prescribed in 13-15-209.

(d) After all valid votes have been counted and totaled, the judges shall record in the pollbook the information specified in subsection (2)(b)(ii).

(4) (a) (i) Before being counted, each questionable vote on a ballot set aside under subsection (2)(a) or (3)(b) must be reviewed by the counting board. The counting board shall evaluate each questionable vote according to rules adopted by the secretary of state.

(ii) If a majority of the counting board members agree that under the rules the voter's intent can be clearly determined, the vote is valid and must be counted according to the voter's intent.

(iii) If a majority of the counting board members do not agree that the voter's intent can be clearly determined under the rules, the vote is not valid and may not be counted.

(b) If a ballot was set aside under subsection (3)(b) because it could not be processed by the voting system due to the ballot's condition, the counting board shall transfer all valid votes to a new ballot that can be processed by the voting system.

(5) A write-in vote may be counted if:

(a) the write-in vote identifies an individual by a designation filed pursuant to 13-10-211(1)(a); or

(b) pursuant to 13-10-211(7), a declaration of nomination was not filed and the write-in vote identifies an individual who is qualified for the office.

(6) A vote is not valid and may not be counted if the elector's choice cannot be determined as provided in this section.

(7) The secretary of state shall adopt rules defining a valid vote and a valid write-in vote for each type of ballot and for each type of voting system used in the state. The rules must provide a sufficient guarantee that all votes are treated equally among jurisdictions using similar ballot types and voting systems.

(8) Local election administrators shall adopt policies to govern local processes that are consistent with the provisions of this title and that provide for:

(a) the security of the counting process against fraud;

(b) the place and time and public notice of each count or recount;

(c) public observance of each count or recount, including observance by representatives authorized under 13-16-411;

(d) the recording of objections to determinations on the validity of an individual vote or to the entire counting process; and

(e) the keeping of a public record of count or recount proceedings.

(9) For purposes of this section, “overvote” means an elector’s vote that has been interpreted by the voting system as an elector casting more votes than allowable for a particular office or ballot issue.

History: En. Sec. 2, Ch. 414, L. 2003; amd. Sec. 17, Ch. 586, L. 2005; amd. Sec. 24, Ch. 273, L. 2007.

Compiler’s Comments

2007 Amendment: Chapter 273 in (2) after “votes” deleted “cast on a paper ballot”; in lead-in of (3)(a) at end substituted “counting votes” for “tabulating a vote cast on a nonpaper ballot”; deleted lead-in and (3)(b)(i) of former (3)(b) that read: “(b) When a voting system is tabulating a vote cast on a paper ballot:

(i) if the voting system recognizes and counts the vote, it is a valid vote”; in (3)(b) near middle substituted “registers an unvoted ballot or an overvote” for “registers an overvote or undervote”; in (3)(d) near middle after “totaled” deleted “pursuant to subsection (4) and this subsection (3)”; in (4)(a)(i) in first sentence before “ballot” deleted “paper”; in (9) deleted definition of undervote that read: “undervote” means an elector’s vote that has been interpreted by the voting system as a nonvote”; and made minor changes in style. Amendment effective October 1, 2007.

13-15-207. Counting board procedures. (1) After ballots have been prepared pursuant to 13-15-201, the election administrator may arrange for the vote count to begin prior to the close of the polls, or immediately upon the closure of the polls, in the manner prescribed in this section.

(2) (a) When a count is conducted after the polls have closed, the counting board shall meet at a place designated by the election administrator.

(b) The board must be sequestered until the count is complete.

(c) The board shall continue counting until the votes cast for all candidates and issues are counted.

(d) Votes must be counted as prescribed in 13-15-206.

(3) When votes are counted prior to the close of the polls:

(a) the election administrator shall make provisions for the delivery of voted ballots to the counting center at any time prior to the closing of the polls;

(b) the board must be sequestered in a room separate from the room where ballots are being cast;

(c) anyone observing the count must be sequestered with the board until the polls close;

(d) the ballots may be processed and counted as they are received;

(e) an election judge or other individual having access to early count results may not disclose that information to the public while the polls are open; and

(f) votes must be counted as prescribed in 13-15-206.

(4) (a) When votes are being counted prior to the close of the polls, in addition to the official oath taken and subscribed to by the election judges, the members of the counting board shall complete and sign the following affirmation: “I, _____, will not discuss the results of the early counting of votes while the polls are open.”

(b) The chief election judge shall witness and sign the affirmation in subsection (4)(a).

History: En. Sec. 150, Ch. 571, L. 1979; amd. Sec. 52, Ch. 414, L. 2003; Sec. 13-15-103, MCA 2001; redes. 13-15-207 by Code Commissioner, 2003.

13-15-208. Determining total vote cast for all candidates for an office. When an elector may vote for two or more candidates for the same office, the total vote cast for all candidates for the office is the total vote cast for all candidates divided by the number of candidates officially declared nominated or elected as shown by the official returns.

History: En. Sec. 202, Ch. 368, L. 1969; R.C.M. 1947, 23-4113; Sec. 13-16-202, MCA 2001; redes. 13-15-208 by Code Commissioner, 2003.

13-15-209. Handling voting system error during count. (1) During a count in which votes are being counted by a voting system, if the election administrator or counting board has reason to believe that the voting system is not operating correctly, the count must be halted and the system must be tested in accordance with rules adopted by the secretary of state pursuant to 13-17-211.

(2) If the test does not show any errors, the count must proceed using the voting system.

(3) If the test shows errors and the errors cannot be corrected or if a majority of the counting board agrees that the system may not be functioning correctly, votes must be counted manually in accordance with 13-15-206(2).

History: En. Sec. 1, Ch. 586, L. 2005; amd. Sec. 25, Ch. 273, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 273 in (1) near beginning substituted "count in which votes are being counted" for "count of paper or nonpaper ballots in which votes are being automatically tabulated"; in (3) near end after "votes" deleted "cast on paper ballots"; deleted former (3)(b) that read: "(b) votes cast on a nonpaper ballot must be counted as provided in rules adopted under 13-17-211"; and made minor changes in style. Amendment effective October 1, 2007.

Part 3 Registrar's Duties

13-15-301. Disposition of items by election administrator. (1) The election administrator shall file the envelopes or packages containing the precinct registers, pollbooks, tally sheets, certificates of registration, and oaths of election officers. Except as provided in subsection (2), the election administrator shall keep them unopened until the county board of canvassers meets to canvass the returns. The board shall open the envelopes or packages.

(2) The election administrator may open a package containing a precinct register to resolve questions concerning provisional ballots.

(3) Immediately after the returns are canvassed, the election administrator shall file the pollbooks, election records, and papers delivered to the board of canvassers with the unopened packages of ballots and ballot stubs.

History: En. Sec. 177, Ch. 368, L. 1969; amd. Sec. 1, Ch. 100, L. 1974; R.C.M. 1947, 23-4007; amd. Sec. 156, Ch. 571, L. 1979; amd. Sec. 26, Ch. 273, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 273 in (1) at beginning of second sentence inserted exception clause; inserted (2) relating to opening packages to resolve question concerning provisional ballots; and made minor changes in style. Amendment effective October 1, 2007.

13-15-302. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 178, Ch. 368, L. 1969; R.C.M. 1947, 23-4008.

Part 4 County Canvass

13-15-401. Governing body as board of county canvassers. (1) The governing body of a county or consolidated local government is ex officio a board of county canvassers and shall meet as the board of county canvassers at the usual place of meeting of the governing body within 3 to 7 days after each election, at a time determined by the board, to canvass the returns.

(2) If one or more of the members of the governing body cannot attend the meeting, the member's place must be filled by one or more county officers chosen by the remaining members of the governing body so that the board of county canvassers' membership equals the membership of the governing body.

(3) The governing body of any political subdivision in the county that participated in the election may join with the governing body of the county or consolidated local government in canvassing the votes cast at the election.

(4) The election administrator is secretary of the board of county canvassers and shall keep minutes of the meeting of the board and file them in the official records of the administrator's office.

History: En. Sec. 179, Ch. 368, L. 1969; R.C.M. 1947, 23-4009; amd. Sec. 157, Ch. 571, L. 1979; amd. Sec. 1, Ch. 118, L. 1995; amd. Sec. 14, Ch. 7, L. 2001; amd. Sec. 38, Ch. 475, L. 2003.

13-15-402. Canvass of votes by board — procedures if all returns not received by time of canvass. (1) If all returns are in at the time of the meeting, the board of county canvassers shall immediately canvass the returns.

(2) If all returns are not received, the board shall postpone the canvass from day to day until all returns are received.

(3) If the returns from an election precinct have not been received by the election administrator within 3 to 7 days after an election, the election administrator shall immediately advise the chief election judge.

(4) If it appears to the board that the polls were not open in a precinct, the board shall certify this to the election administrator. The election administrator shall enter the certification in the minutes and in the record required by 13-15-404.

History: En. Sec. 180, Ch. 368, L. 1969; R.C.M. 1947, 23-4010; amd. Sec. 158, Ch. 571, L. 1979; amd. Sec. 39, Ch. 475, L. 2003.

13-15-403. Canvass to be public — nonessentials to be disregarded — petition for recount. (1) The canvass shall be public. It shall proceed by opening the returns, auditing the tally books or other records of votes cast, determining the vote for each individual and for and against each ballot issue from each precinct, compiling totals, and declaring or certifying the results.

(2) The board shall record all write-in votes shown in the returns from each precinct.

(3) The returns may not be rejected because of failure to show who administered the oath to the election judges, failure to complete all the certificates in a pollbook, or because of failure of any other act making up the returns that is not essential to determine for whom the votes were cast.

(4) If during a canvass the board finds an error in a precinct or precincts affecting the accuracy of vote totals, the board immediately may petition for a recount of the votes cast in the precinct or precincts, as provided in 13-16-201, or for an inspection of ballots, as provided in 13-16-420.

History: En. Sec. 181, Ch. 368, L. 1969; amd. Sec. 44, Ch. 365, L. 1977; R.C.M. 1947, 23-4011; amd. Sec. 159, Ch. 571, L. 1979; amd. Sec. 1, Ch. 19, L. 1987; amd. Sec. 15, Ch. 591, L. 1991.

13-15-404. Information to be entered on record. (1) The secretary of the board shall prepare and file in the official records of his office a report of the canvass which lists:

(a) the total number of electors voting in each precinct, district, or portion of a district in the county and the total in the county;

(b) the name of each individual receiving votes and the office for which the votes were received;

(c) the number and title of each ballot issue;

(d) the votes by precinct, district, or portion of a district within the county for each individual and for and against each ballot issue;

(e) the total votes in the county for each individual and for and against each ballot issue; and

(f) for municipal elections, the total number of electors voting in each municipality and the votes by municipality for each individual and for and against each ballot issue.

(2) Write-in votes for an individual shall be entered in the report in the same place as the votes for other individuals for the same office but shall be identified as write-in votes.

History: En. Sec. 182, Ch. 368, L. 1969; R.C.M. 1947, 23-4012; amd. Sec. 160, Ch. 571, L. 1979; amd. Sec. 2, Ch. 70, L. 1983.

13-15-405. Declaration or certification of results. (1) The board shall declare nominated or elected the individuals having the highest number of votes cast for each county and precinct office, except as provided in 13-10-204.

(2) The board shall proclaim the adoption or rejection of a county ballot issue.

(3) The board shall certify the results of the canvass of votes cast for individuals for political subdivision offices and for and against political subdivision ballot issues to the governing body of each political subdivision participating in the election.

(4) If there is a tie vote for a county office, an office of a political subdivision wholly within the county, a precinct office, or a ballot issue voted on only in that county or portion of that county, the board shall certify the vote to the election administrator.

(5) The board shall certify the results of the canvass of votes cast for justice of the peace, city judge, and municipal court judge to the supreme court in order to ensure compliance with 3-1-1502 or 3-1-1503.

History: En. Secs. 183, 192, Ch. 368, L. 1969; amd. Secs. 45, 48, Ch. 365, L. 1977; R.C.M. 1947, 23-4013(1), 23-4103(5); amd. Sec. 161, Ch. 571, L. 1979; amd. Sec. 6, Ch. 317, L. 1991.

13-15-406. Certificates to be issued by the election administrator. The election administrator shall, except as provided in 13-37-127, deliver a certificate of nomination or election to each individual declared elected by the board.

History: En. Sec. 184, Ch. 368, L. 1969; amd. Sec. 46, Ch. 365, L. 1977; R.C.M. 1947, 23-4014; amd. Sec. 162, Ch. 571, L. 1979.

CHAPTER 16 RECOUNTS AND TIE VOTES

Part 1 County Recount Board

13-16-101. County governing body as county recount board. (1) The county recount board shall consist of three members.

(2) Three members of the governing body shall be appointed by the chairman if there are more than three members of the governing body.

(3) If three members of the governing body cannot attend when the board meets, any vacant place shall be filled by one or more county officers chosen by the remaining members of the governing body.

(4) If a member of the recount board is a candidate for an office or nomination for which votes are to be recounted, he shall be disqualified.

(5) The election administrator is secretary of the recount board, and the board may hire any additional clerks as needed.

(6) The board may appoint county employees or hire clerks to assist as needed.

History: En. Sec. 203, Ch. 368, L. 1969; R.C.M. 1947, 23-4114; amd. Sec. 170, Ch. 571, L. 1979.

Part 2 Recounts in Close Elections

13-16-201. Conditions under which recount to be conducted. (1) A recount must be conducted if:

(a) a candidate for a county, municipal, or district office voted for in only one county, other than a legislator or a judge of the district court, or a precinct office is defeated by a margin not exceeding 1/4 of 1% of the total votes cast or by a margin not exceeding 10 votes, whichever is greater, and the defeated candidate, within 5 days after the official canvass, files with the election administrator a verified petition stating that the candidate believes that a recount will change the result and that a recount of the votes for the office or nomination should be conducted;

(b) a candidate for a congressional office, a state or district office voted on in more than one county, the legislature, or judge of the district court is defeated by a margin not exceeding 1/4 of 1% of the total votes cast for all candidates for the same position, and the defeated candidate, within 5 days after the official canvass, files a petition with the secretary of state as set forth in subsection (1)(a). The secretary of state shall immediately notify by certified mail each election administrator whose county includes any precincts that voted for the office, and a recount must be conducted in those precincts.

(c) a question submitted to the vote of the people of a county, municipality, or district within a county is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the election administrator. This petition must be signed by not less than 10 electors of the jurisdiction and must be filed within 5 days after the official canvass.

(d) a question submitted to the vote of the people of the state is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the secretary of state. This petition must be signed by not less than 100 electors of the state, representing at least five counties of the state, and must be filed within 5 days after the official canvass.

(e) a question submitted to the vote of the people of a multicounty district is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the secretary of state. This petition must be signed by not less than 25 electors of the district, representing at least two counties, and must be filed within 5 days after the official canvass.

(f) if a canvassing board petitions for a recount as provided in 13-15-403.

(2) When a recount is required under subsection (1)(b), (1)(d), or (1)(e), the secretary of state shall immediately notify each election administrator by certified mail of the filing of the petition, and a recount must be conducted in all precincts in each affected county.

History: En. Sec. 192, Ch. 368, L. 1969; amd. Sec. 48, Ch. 365, L. 1977; R.C.M. 1947, 23-4103(1) thru (4); amd. Sec. 171, Ch. 571, L. 1979; amd. Sec. 2, Ch. 19, L. 1987; amd. Sec. 56, Ch. 414, L. 2003.

13-16-202. Renumbered 13-15-208. Code Commissioner, 2003.

13-16-203. Recount for tie votes. When a tie has been certified to the election administrator, as provided in 13-15-405(4), or the secretary of state, he shall proceed as if a petition for a recount has been filed. If a tie exists after the recount, the tie shall be resolved as provided by law.

History: En. Secs. 183, 192, Ch. 368, L. 1969; amd. Secs. 45, 48, Ch. 365, L. 1977; R.C.M. 1947, 23-4013(2), 23-4103(6); amd. Sec. 172, Ch. 571, L. 1979; amd. Sec. 49, Ch. 575, L. 1981.

13-16-204. Meeting of recount board when recount requested. (1) Immediately upon receiving a petition for a recount or a notice from the secretary of state that a petition has been filed with him, as provided in 13-16-201, the election administrator shall notify the members of the county recount board.

(2) The board shall convene at the usual meeting place of the governing body without undue delay but not later than 5 days after receiving notice from the election administrator.

History: En. Sec. 204, Ch. 368, L. 1969; R.C.M. 1947, 23-4115; amd. Sec. 173, Ch. 571, L. 1979; amd. Sec. 3, Ch. 19, L. 1987.

13-16-205. Expenses of recount. The expense of the recount provided for in 13-16-201 is a county charge. Recount expenses of the secretary of state and board of state canvassers are a state charge.

History: En. Sec. 211, Ch. 368, L. 1969; R.C.M. 1947, 23-4122; amd. Sec. 50, Ch. 575, L. 1981.

13-16-206 through 13-16-210 reserved.

13-16-211. Recounts allowed if bond posted to cover all costs. (1) If a candidate for a public office is defeated by a margin exceeding 1/4 of 1% but not exceeding 1/2 of 1% of the total votes cast for all candidates for the same position, he may, within 5 days after the official canvass, file with the officer with whom his declaration or petition for nomination was filed a petition stating that he believes a recount will change the result of the election.

(2) The unsuccessful candidate shall post a bond with the clerk and recorder of the county in which he resides. The bond must be in an amount set by the clerk and recorder sufficient to cover all costs of the recount incurred by each county in which a recount is sought, including loss of time of regular employees caused by absence from their regular duties.

(3) Upon the filing of a petition and posting of a bond under this section, the board of county canvassers in each county affected shall meet and recount the ballots specified in the petition.

History: En. Sec. 1, Ch. 395, L. 1979.

Part 3 Recounts Under Court Order

13-16-301. Application and court order for recount. (1) (a) Within 5 days after the canvass of election returns, an unsuccessful candidate for any public office at an election may apply to the district court of the county where the election was held for an order directing the county recount board to make a recount of the votes cast in any or all of the precincts. If the election was held in more than one county, the application shall be made to the district court of the county where the candidate resides.

(b) Within 5 days after the canvass of election returns, an elector who was eligible to vote on the issue and who believes that there are grounds for a recount of the votes cast for and against a ballot issue may apply to the district court of the county where he resides for an order directing the appropriate county recount board to make a recount of the votes cast in any or all of the precincts.

(2) The application shall specify the grounds for a recount and be verified by the applicant that the matters contained in it are true to the best of the applicant's knowledge, information, and belief.

(3) Within 5 days after filing of the application, the judge shall hear the application and determine its sufficiency.

(4) If the judge finds there is probable cause to believe that the votes cast for the applicant or the ballot issue were not correctly counted, he shall order the appropriate county recount board to assemble within 5 days after the order is issued at a time and place fixed by the order. The board shall meet and recount the ballots as specified in the order.

History: En. Sec. 190, Ch. 368, L. 1969; R.C.M. 1947, 23-4101; amd. Sec. 174, Ch. 571, L. 1979.

13-16-302. Service of copy of application — hearing. The candidate found to be elected as a result of the original or first canvass shall be served with a copy of the application for recount. He shall be given an opportunity to be heard and shall be permitted to be present and to be represented at any recount ordered.

History: En. Sec. 199, Ch. 368, L. 1969; R.C.M. 1947, 23-4110.

13-16-303. Presumption of incorrectness from failure to comply with provisions for counting votes. If it appears from a verified application that the election judges failed to comply with the provisions of 13-15-206, that is sufficient cause for believing that the election judges did not correctly ascertain the number of votes cast for the applicant or ballot issue.

History: En. Sec. 193, Ch. 368, L. 1969; R.C.M. 1947, 23-4104; amd. Sec. 175, Ch. 571, L. 1979; amd. Sec. 57, Ch. 414, L. 2003.

13-16-304. Ordering in another judge — jurisdiction. (1) If the judge of the district court in which the application is filed is for any reason disqualified from acting, the judge or a supreme court justice shall order another district judge to hear and determine the application.

(2) The district court shall not lose jurisdiction of the case by failure to hear and determine the application within the prescribed time but shall retain jurisdiction until the cause is finally determined and the final count is made by the county recount board.

History: En. Sec. 194, Ch. 368, L. 1969; R.C.M. 1947, 23-4105; amd. Sec. 176, Ch. 571, L. 1979.

13-16-305. Limitation of recount to certain counties or precincts. (1) If the application asks for a recount in more than one county or precinct but there are not sufficient grounds for a recount in all counties or precincts, the court shall order a recount in only the counties or precincts for which sufficient grounds are stated and shown.

(2) The county recount board shall recount votes only in those counties or precincts and for those offices or ballot issues specified in the court order.

History: En. Secs. 191, 195, Ch. 368, L. 1969; R.C.M. 1947, 23-4102, 23-4106; amd. Sec. 177, Ch. 571, L. 1979.

13-16-306. Procedure when more than one application for recount. If more than one candidate makes application for a recount, the court may consider the applications together. The court may make separate or joint orders on the applications and apportion the expenses between the applicants.

History: En. Sec. 197, Ch. 368, L. 1969; R.C.M. 1947, 23-4108.

13-16-307. Expenses of court-ordered recount. (1) The court shall in its order determine the probable expense of making the recount, and the applicant or applicants asking for the recount shall deposit with the board the amount determined, in cash.

(2) If the recount shows that an applicant has been elected to office, the deposit of the applicant shall be returned to him.

(3) If the recount shows that an applicant has not been elected and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess; but if the expense is less than the cost, the difference shall be refunded to the applicant.

(4) If the recount reverses the results of a ballot issue election, the deposit of the applicant shall be returned to him.

(5) If the recount does not reverse the results of a ballot issue election and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess; but if the expense is less than the cost, the difference shall be refunded to the applicant.

History: En. Sec. 196, Ch. 368, L. 1969; R.C.M. 1947, 23-4107; amd. Sec. 178, Ch. 571, L. 1979.

Part 4 Recount Procedure

13-16-411. Individuals entitled to appear at recount. (1) Representatives of the news media may be present at the recount. The recount must be public, but the audience may be limited to prevent interference with the procedures.

(2) Each candidate involved in a recount may appear, personally or by representative, and must have full opportunity to witness the entire recount process.

(3) If the recount is on a ballot issue, one qualified elector favoring each side of the question may be present.

History: En. Sec. 205, Ch. 368, L. 1969; R.C.M. 1947, 23-4116(1), (2), (4); amd. Sec. 179, Ch. 571, L. 1979; Sec. 13-16-401, MCA 1979; redes. 13-16-411 by Code Commissioner, 1979; amd. Sec. 58, Ch. 414, L. 2003.

13-16-412. Procedure for recounting paper ballots. To conduct a recount of paper ballots:

(1) the election administrator shall provide to the recount board, unopened, each sealed package or envelope received from the election judges of the precinct or precincts in which a recount is ordered, containing all the paper ballots voted in the precinct or precincts;

(2) a member of the recount board shall open each sealed package or envelope and remove the ballots, and the board shall count the votes on each ballot manually in the manner provided in 13-15-206(2); and

(3) the recount must be tallied on previously prepared tally sheets. The tally sheets must show the names of the respective candidates, the office or offices for which a recount is made, and the number of each election precinct.

History: En. Sec. 198, Ch. 368, L. 1969; R.C.M. 1947, 23-4109; amd. Sec. 180, Ch. 571, L. 1979; Sec. 13-16-402, MCA 1979; redes. 13-16-412 by Code Commissioner, 1979; amd. Sec. 59, Ch. 414, L. 2003; amd. Sec. 18, Ch. 586, L. 2005.

13-16-414. Repealed. Sec. 32, Ch. 273, L. 2007.

History: En. Sec. 182, Ch. 571, L. 1979; amd. Sec. 51, Ch. 575, L. 1981; amd. Sec. 60, Ch. 414, L. 2003; amd. Sec. 19, Ch. 586, L. 2005.

13-16-415. Recount totals. After a recount is completed, tally sheets shall be compared and the correctness of all reports of votes cast ascertained. The totals for each candidate or on each issue shall be compiled and checked for accuracy.

History: En. Sec. 183, Ch. 571, L. 1979.

13-16-416. Report of recount. (1) If the recount shows the votes for any candidate or on any ballot issue are more or less than the number shown upon the official returns, the secretary of the recount board shall prepare a corrected report which states the number of votes ascertained by the recount.

(2) The recount board shall direct the secretary to enter the result of the election as determined by the recount in the board records.

History: En. Sec. 184, Ch. 571, L. 1979.

13-16-417. Sealing ballots and voting systems. (1) When a recount of paper ballots that was conducted using a voting system has been finished, each ballot must again be sealed in the same package or envelope in the presence of the election administrator and the county recount board and must be delivered to the election administrator for custody.

(2) All voting systems must be secured as provided in rules adopted under 13-17-211.

(3) All other materials used in the recount that are required to be sealed must be resealed in the same manner and delivered to the election administrator for custody.

History: En. Sec. 200, Ch. 368, L. 1969; R.C.M. 1947, 23-4111; amd. Sec. 185, Ch. 571, L. 1979; Sec. 13-16-403, MCA 1979; redes. 13-16-417 by Code Commissioner, 1979; amd. Sec. 61, Ch. 414, L. 2003.

13-16-418. Certification after recount. (1) Immediately after the recount, the county recount board shall certify the result.

(2) At least two members of the board shall sign the certificate, and it shall be attested to under seal by the election administrator.

(3) The certificate shall set forth in substance the proceedings of the board and the appearance of any candidates or representatives. The certificate shall adequately designate each precinct recounted; the vote of each precinct according to the official canvass previously

made; the nomination, position, or question involved; and the correct vote of each precinct as determined by the recount.

(4) When the certificate relates to a recount for a congressional office, a state or district office voted on in more than one county, a legislative office, or an office of judge of the district court or a ballot issue voted on in more than one county, the certificate shall be made in duplicate. One copy shall be transmitted immediately to the secretary of state by certified mail.

(5) (a) If the recount relates to a county, municipal, or district office voted for in only one county, other than that of a legislator or a judge of the district court, or a precinct office or a ballot issue voted on in only one county, the county recount board shall immediately recanvass the returns as corrected by the certificate showing the result of the recount and make a corrected abstract of the votes.

(b) If the corrected abstract shows no change in the result, no further action need be taken.

(c) If there is a change in the result, a new certificate of election or nomination shall be issued to each candidate found to be elected or nominated and the first certificate is void. The individual receiving the second certificate shall be elected or nominated to the office.

History: Ap. p. Sec. 206, Ch. 368, L. 1969; amd. Sec. 49, Ch. 365, L. 1977; Sec. 23-4117, R.C.M. 1947; Ap. p. Sec. 201, Ch. 368, L. 1969; Sec. 23-4112, R.C.M. 1947; R.C.M. 1947, 23-4112, 43-4117; amd. Sec. 186, Ch. 571, L. 1979; Sec. 13-16-404, MCA 1979; redes. 13-16-418 by Code Commissioner, 1979.

13-16-419. Recount by board of state canvassers. (1) When the secretary of state receives certificates from all county recount boards, he shall file them, fix a time and place, as soon as possible, for reconvening the board of state canvassers, and shall notify the members.

(2) The board of state canvassers shall recanvass the official returns on the office, nomination, position, or question, as corrected by the certificates, and make a new and corrected abstract of the votes cast.

(3) (a) If the corrected abstract shows no change in the results, no further action shall be taken.

(b) If there is a change in the results, a new certificate of election or nomination shall be issued in the same manner as the certificate of election or nomination was previously issued to each candidate elected or nominated.

History: En. Sec. 207, Ch. 368, L. 1969; R.C.M. 1947, 23-4118; Sec. 13-16-405, MCA 1979; redes. 13-16-419 by Code Commissioner, 1979; amd. Sec. 52, Ch. 575, L. 1981.

13-16-420. Misplaced or missing ballots. If during a recount the county recount board discovers that ballots are misplaced or missing, it may petition the election administrator to inspect all sealed paper ballots within the county precincts to find the misplaced or missing ballots. Upon receiving the petition, the election administrator shall inspect the sealed ballots to find the misplaced or missing ballots. Upon completion of the recount, the misplaced or missing ballots must be placed in their proper precinct and sealed with the remaining ballots.

History: En. Sec. 16, Ch. 591, L. 1991; amd. Sec. 62, Ch. 414, L. 2003.

Part 5 Tie Votes

13-16-501. Tie vote after recount. (1) If the recount shows a tie vote for any office and it cannot be determined who has been nominated by the primary election, the election officer with whom the candidates' nominating declarations or petitions were filed shall determine by lot which candidate shall be nominated. Written notice of the time and place of the drawing shall be given to each candidate involved.

(2) If the recount after a general election shows a tie vote and it cannot be determined who has been elected, the office or position shall be filled as provided by 13-16-502 through 13-16-506.

History: En. Sec. 208, Ch. 368, L. 1969; R.C.M. 1947, 23-4119; amd. Sec. 187, Ch. 571, L. 1979.

13-16-502. Tie vote in election for United States congress. If there is a tie vote for United States representative or senator, the secretary of state shall send a certified statement to the governor showing the votes cast and the governor shall order a special election.

History: En. Sec. 209, Ch. 368, L. 1969; R.C.M. 1947, 23-4120(1); amd. Sec. 188, Ch. 571, L. 1979.

13-16-503. Tie vote in election for supreme court justice, district court judge, or state legislator. If there is a tie vote for justice of the supreme court, judge of a district court, or

member of the legislature, the secretary of state shall send a certified statement to the governor showing the votes cast for each individual and the governor shall appoint one of those candidates to the office.

History: En. Sec. 209, Ch. 368, L. 1969; R.C.M. 1947, 23-4120(2); amd. Sec. 189, Ch. 571, L. 1979.

13-16-504. Tie vote in election for state executive officers. If there is a tie vote for governor and lieutenant governor, secretary of state, attorney general, state auditor, clerk of the supreme court, superintendent of public instruction, or any other state executive officer, the secretary of state shall transmit a certified copy of the statement to the legislature showing the votes cast for the two or more candidates having an equal and the highest number of votes. The legislature, at its next regular session, shall elect one of these candidates to fill the office by joint ballot of the two houses.

History: En. Sec. 210, Ch. 368, L. 1969; amd. Sec. 50, Ch. 365, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 23-4121(1), (4); amd. Sec. 190, Ch. 571, L. 1979.

13-16-505. Tie vote in election for county commissioner. If there is a tie vote for commissioner, the senior district judge shall appoint one of the candidates who tied to fill the office as in other cases of vacancy.

History: En. Sec. 210, Ch. 368, L. 1969; amd. Sec. 50, Ch. 365, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 23-4121(3); amd. Sec. 191, Ch. 571, L. 1979.

13-16-506. Tie vote in election for other county officers. If there is a tie vote for clerk of the district court, county attorney, or any county officer except county commissioner, the commissioners shall appoint one of the candidates who tied to fill the office as in other cases of vacancy.

History: En. Sec. 210, Ch. 368, L. 1969; amd. Sec. 50, Ch. 365, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 23-4121(2); amd. Sec. 192, Ch. 571, L. 1979.

13-16-507. Tie vote in election for officers of nonspecified political subdivision. If there is a tie vote for an officer of any political subdivision not specifically provided for in this part, the governing body of that jurisdiction shall appoint one of the candidates who tied to fill the office as in other cases of vacancy.

History: En. Sec. 193, Ch. 571, L. 1979.

CHAPTER 17 VOTING SYSTEMS

Part 1 General Provisions

13-17-101. Secretary of state to approve voting systems. (1) A voting system may not be used for any election in this state unless the system is approved by the secretary of state as provided in this section.

(2) The secretary of state shall:

(a) examine a voting system proposed for use to determine if it complies with the requirements of 13-17-103;

(b) within 30 days after examining the voting system, file a report of the examination in the secretary of state's office;

(c) include in the report the reasons for the voting system's approval or disapproval and the secretary of state's opinion about the economic and procedural impact that the voting system's use or nonuse may have on the various classes of counties of this state; and

(d) within 5 days after filing the report, transmit to each election administrator, including school election administrators for elections under Title 20, chapter 20, a copy of the report.

(3) Voting systems may not be used in an election unless approved by the secretary of state 60 days or more prior to the election at which they will be used.

History: En. Sec. 142, Ch. 368, L. 1969; amd. Sec. 40, Ch. 365, L. 1977; R.C.M. 1947, 23-3801(1), (2); amd. Sec. 194, Ch. 571, L. 1979; amd. Sec. 63, Ch. 414, L. 2003.

13-17-102. Use of qualified technicians and advisers. (1) To the extent that funds are available, the secretary of state may compensate qualified technicians and advisers to assist in carrying out the secretary of state's duties required by 13-17-101.

(2) An entity submitting a voting system for examination shall pay to the secretary of state certain costs connected with the examination based on an agreement reached between the two parties.

History: En. Sec. 142, Ch. 368, L. 1969; amd. Sec. 40, Ch. 365, L. 1977; R.C.M. 1947, 23-3801(3), (4); amd. Sec. 195, Ch. 571, L. 1979; amd. Sec. 64, Ch. 414, L. 2003.

13-17-103. Required specifications for voting systems. (1) A voting system may not be approved under 13-17-101 unless the voting system:

- (a) allows an elector to vote in secrecy;
- (b) prevents an elector from voting for any candidate or on any ballot issue more than once;
- (c) prevents an elector from voting on any office or ballot issue for which the elector is not entitled to vote;
- (d) allows an elector to vote only for the candidates of the party selected by the elector in the primary election;
- (e) allows an elector to vote a split ticket in a general election if the elector desires;
- (f) allows each valid vote cast to be registered and recorded within the performance standards adopted pursuant to subsection (2);
- (g) may be protected from tampering for a fraudulent purpose;
- (h) prevents an individual from seeing or knowing the number of votes registered for any candidate or on any ballot issue during the progress of voting;
- (i) allows write-in voting;
- (j) will, if purchased by a jurisdiction within the state, be provided with a guarantee that the training and technical assistance will be provided to election officials under the contract for purchase of the voting system;
- (k) uses a paper ballot that allows votes to be manually counted; and
- (l) allows auditors to access and monitor any software program while it is running on the system to determine whether the software is running properly.

(2) To implement the provisions of subsection (1)(f), the secretary of state shall adopt rules setting a benchmark performance standard that must be met in tests by each voting system prior to approval under 13-17-101. The standard must be based on commonly accepted industry standards for readily available technologies.

History: En. Sec. 143, Ch. 368, L. 1969; R.C.M. 1947, 23-3802(1), (3); amd. Sec. 196, Ch. 571, L. 1979; amd. Sec. 33, Ch. 370, L. 1987; amd. Sec. 65, Ch. 414, L. 2003; amd. Sec. 1, Ch. 275, L. 2005; amd. Sec. 17, Ch. 286, L. 2005; amd. Sec. 27, Ch. 273, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 273 in (1)(k) after "counted" deleted "except as provided in subsection (2)"; deleted former (2) that read: "(2) A direct recording electronic system that does not mark a paper ballot may be used to facilitate voting by a disabled voter pursuant to the Help America Vote Act of 2002, 42 U.S.C. 15301, et seq., if:

- (a) (i) a direct recording electronic system that uses a paper ballot has not yet been certified by the federal election assistance commission; or
- (ii) a direct recording electronic system that marks a paper ballot has not yet been approved by the secretary of state pursuant to 13-17-101; and
- (b) the system records votes in a manner that will allow the votes to be printed and manually counted or audited if necessary"; and made minor changes in style. Amendment effective October 1, 2007.

13-17-104. Providing voting systems — payment. (1) The county governing body may, as practicable, provide for the use of any voting system approved pursuant to 13-17-101.

(2) Funds for voting systems may be provided by the same methods available for other capital equipment purchases by the county.

(3) The governing body of a county may put the question of purchasing voting systems or the question of which type of voting system to purchase to the registered electors of the county by the same method that any other question is referred to the electors.

(4) A county governing body may, in the manner provided in rules adopted under 13-17-107, submit a voting system for consideration under 13-17-101.

History: En. Sec. 144, Ch. 368, L. 1969; R.C.M. 1947, 23-3803; amd. Sec. 197, Ch. 571, L. 1979; amd. Sec. 66, Ch. 414, L. 2003.

13-17-105. Experimental use of voting systems. The governing body of a county may, without adoption or purchase of the voting system, provide for the experimental use in one or more precincts at an election of a voting system that has been approved by the secretary of state under 13-17-101. The voting system's use at the election is valid for all purposes as if the system had been formally adopted or purchased by the county.

History: En. Sec. 158, Ch. 368, L. 1969; R.C.M. 1947, 23-3817; amd. Sec. 198, Ch. 571, L. 1979; amd. Sec. 67, Ch. 414, L. 2003.

13-17-106. General application of election laws. All laws applicable to elections when voting is not done using a voting system and all penalties prescribed for violations of those laws apply to elections and precincts when voting systems are used if those laws are not in conflict with the provisions of this chapter.

History: En. Sec. 163, Ch. 368, L. 1969; amd. Sec. 44, Ch. 334, L. 1977; amd. Sec. 42, Ch. 365, L. 1977; R.C.M. 1947, 23-3822; amd. Sec. 199, Ch. 571, L. 1979; amd. Sec. 68, Ch. 414, L. 2003.

13-17-107. Secretary of state to prescribe rules. (1) The secretary of state may prescribe rules for the submission of voting systems for examination and additional requirements for approval of voting systems.

(2) The secretary of state shall prescribe rules for the complete procedures necessary to use each type of voting system now approved for use in this state and for each type of system approved for use under the provisions of this chapter.

History: En. Sec. 200, Ch. 571, L. 1979; amd. Sec. 69, Ch. 414, L. 2003.

13-17-108. Punchcard voting systems prohibited. A punchcard voting system may not be used in an election after December 31, 2003.

History: En. Sec. 1, Ch. 320, L. 2003.

Part 2 Preparation for Use of Systems

13-17-201. Election administrator to instruct election judges. (1) Before each election in which a voting system is used, the election administrator shall instruct all election judges in the use of the system as provided in 13-4-203.

(2) A chief election judge may not serve in a precinct where a voting system is used unless the judge has received the required instruction, is fully qualified to perform duties in connection with the system, and has received a certificate to that effect from the election administrator.

History: En. Sec. 148, Ch. 368, L. 1969; amd. Sec. 41, Ch. 365, L. 1977; R.C.M. 1947, 23-3807; amd. Sec. 201, Ch. 571, L. 1979; amd. Sec. 70, Ch. 414, L. 2003.

13-17-202. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 151, Ch. 368, L. 1969; R.C.M. 1947, 23-3810.

13-17-203. Publication of information concerning voting systems. Not more than 10 or less than 3 days before an election at which a voting system will be used, the election administrator shall publish on radio or television, as provided in 2-3-105 through 2-3-107, or in a newspaper of general circulation in the county:

- (1) a diagram showing the voting system and ballot arrangement (in newspaper only);
- (2) a statement of the locations where voting systems are on public exhibition;
- (3) instructions on how to vote.

History: En. Sec. 149, Ch. 368, L. 1969; R.C.M. 1947, 23-3808; amd. Sec. 202, Ch. 571, L. 1979; amd. Sec. 71, Ch. 414, L. 2003.

13-17-204. Voting systems to be exhibited. A voting system must be on exhibition in the office of the election administrator of any county where the voting system is used and may be exhibited at other locations. The election administrator shall demonstrate the voting system to any inquiring elector.

History: En. Sec. 150, Ch. 368, L. 1969; R.C.M. 1947, 23-3809; amd. Sec. 203, Ch. 571, L. 1979; amd. Sec. 72, Ch. 414, L. 2003.

13-17-205. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 145, Ch. 368, L. 1969; amd. Sec. 1, Ch. 116, L. 1977; R.C.M. 1947, 23-3804(1), (7).

13-17-206. Repealed. Sec. 32, Ch. 273, L. 2007.

History: En. Sec. 145, Ch. 368, L. 1969; amd. Sec. 1, Ch. 116, L. 1977; R.C.M. 1947, 23-3804; amd. Sec. 204, Ch. 571, L. 1979; amd. Sec. 73, Ch. 414, L. 2003.

13-17-207. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 152, Ch. 368, L. 1969; R.C.M. 1947, 23-3811.

13-17-208 through 13-17-210 reserved.

13-17-211. Uniform procedures for using voting systems. (1) For each voting system approved under 13-17-101, the secretary of state shall adopt rules specifying the procedures to be uniformly applied in elections conducted with the voting system.

(2) The rules must, at a minimum, specify procedures that address the following:

(a) performance testing and certification under 13-17-212;

(b) how electors ensure the proper disposition of a ballot pursuant to 13-13-117(2);

(c) the procedures to be followed if the comparison under 13-15-206(2)(b) reveals discrepancies;

(d) how to operate and test the system during counts; and

(e) the security measures necessary to secure the voting system before, during, and after an election, including security following a recount under 13-16-417.

History: En. Sec. 3, Ch. 414, L. 2003; amd. Sec. 20, Ch. 586, L. 2005; amd. Sec. 28, Ch. 273, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 273 in (2)(a) after "performance" inserted "testing and"; deleted former (2)(c) that read: "(c) the process to be used to prepare for a vote count under 13-10-311(3) and 13-15-201(2) for nonpaper ballots so that election judges can determine the total number of electors voting in the election compared to the total number of ballots cast"; in (2)(d) at end after "counts" deleted "or recounts"; deleted former (2)(g) that read: "(g) testing and certification of voting systems pursuant to 13-17-212"; and made minor changes in style. Amendment effective October 1, 2007.

13-17-212. Performance testing and certification of voting systems prior to election. (1) No more than 30 days prior to an election in which a voting system is used, the election administrator shall publicly test and certify that the system is performing properly.

(2) The secretary of state shall ensure that at least 10% of all voting systems in the state have been randomly tested and certified at least once every calendar year.

(3) If any type of direct recording electronic voting system is approved pursuant to 13-17-101 after meeting the requirements of 13-17-103, provision must be made to ensure that, at a minimum, each system is tested and certified as follows:

(a) upon delivery;

(b) no more than 30 days prior to the election; and

(c) on election day.

(4) The provisions of this section must be implemented according to rules adopted by the secretary of state pursuant to 13-17-211.

History: En. Sec. 4, Ch. 414, L. 2003; amd. Sec. 18, Ch. 286, L. 2005; amd. Sec. 29, Ch. 273, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 273 in (1) near middle inserted "publicly". Amendment effective October 1, 2007.

Part 3 Voting Procedure

13-17-305. Repealed. Sec. 32, Ch. 273, L. 2007.

History: En. Sec. 159, Ch. 368, L. 1969; R.C.M. 1947, 23-3818(2); amd. Sec. 206, Ch. 571, L. 1979; amd. Sec. 1, Ch. 588, L. 1985; amd. Sec. 74, Ch. 414, L. 2003.

13-17-306. Use of separate paper ballots for voting on certain candidates or issues. Subject to 13-12-202, whenever a voting system does not allow adequate space for all candidates for all offices or for all ballot issues, separate paper ballots may be used for some or all offices or ballot issues if written authorization is given to the election administrator by the secretary of state.

History: En. Sec. 160, Ch. 368, L. 1969; R.C.M. 1947, 23-3819; amd. Sec. 207, Ch. 571, L. 1979; amd. Sec. 75, Ch. 414, L. 2003.

CHAPTER 19 MAIL BALLOT ELECTIONS

Part 1 General Provisions

13-19-101. Statement of purpose. The purpose of this chapter is to provide the option of conducting certain specified elections using a procedure called a “mail ballot election” and to provide the procedures therefor. The provisions of this chapter recognize that sound public policy concerning the conduct of elections often requires the balancing of various elements of the public interest that are sometimes in conflict. Among these factors are the public’s interest in fair and accurate elections, the election of those who will govern or represent, and cost-effective administration of all functions of government, including the conduct of elections. The provisions of this chapter further recognize that when these and other factors are balanced, the conduct of elections by mail ballot is potentially the most desirable of the available options in certain circumstances.

History: En. Sec. 1, Ch. 196, L. 1985.

13-19-102. Definitions. As used in this chapter, the following definitions apply:

(1) “Election day” is the date established by law on which a particular election would be held if that election were being conducted by means other than a mail ballot election.

(2) “Mail ballot election” means any election conducted by mail pursuant to 13-19-104 and in compliance with the procedure specified in 13-19-106.

(3) “Political subdivision” means a political subdivision of the state, including a school district.

(4) “Return/verification envelope” means an envelope that contains a secrecy envelope and ballot and that is designed to:

(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and

(b) allow it to be used in the United States mail.

(5) “Secrecy envelope” means an envelope used to contain the elector’s ballot and that is designed to conceal the elector’s vote and to prevent that elector’s ballot from being distinguished from the ballots of other electors.

History: En. Sec. 2, Ch. 196, L. 1985; amd. Sec. 1, Ch. 10, L. 1987; amd. Sec. 1, Ch. 146, L. 1997.

13-19-103. General election laws to apply. All laws applicable to elections when voting is not done by mail ballot and all penalties prescribed for violation of those laws apply to elections conducted by mail ballot to the extent they do not specifically conflict with the provisions of this chapter or are not otherwise provided for by this chapter.

History: En. Sec. 5, Ch. 196, L. 1985.

13-19-104. Mail ballot elections not mandatory — when authorized — when prohibited — when county election administrator conducts. (1) Conducting elections by mail ballot is only one option available to local officials, and this chapter does not mandate that the procedure be used.

(2) Except as provided in subsection (3), any election may be conducted by mail ballot.

(3) The following elections may not be conducted by mail ballot:

(a) a regularly scheduled federal, state, or county election;

(b) a special federal or state election, unless authorized by the legislature; or

(c) a regularly scheduled or special election when another election in the political subdivision is taking place at the polls on the same day.

(4) (a) Except as provided in subsection (4)(b), if more than one mail ballot election is being conducted in the political subdivision on the same day, the county election administrator shall conduct the elections.

(b) The requirement that a county election administrator shall conduct more than one mail ballot election on the same day does not apply to a mail ballot school bond election conducted by

the trustees of any two or more school districts that have unified pursuant to 20-6-312 or that have created a joint board of trustees pursuant to 20-3-361.

History: En. Sec. 4, Ch. 196, L. 1985; amd. Sec. 2, Ch. 10, L. 1987; amd. Sec. 2, Ch. 146, L. 1997; amd. Sec. 1, Ch. 264, L. 2005.

13-19-105. Role of secretary of state. In addition to other powers and duties conveyed by law, the secretary of state, with advice from election administrators, shall:

- (1) prescribe the form of materials to be used in the conduct of mail ballot elections;
- (2) review written plans for the conduct of mail ballot elections as provided in 13-19-205; and
- (3) adopt rules consistent with this chapter to:
 - (a) establish and maintain uniformity in the conduct of mail ballot elections; and
 - (b) establish procedures for the conduct of mail ballot elections that:
 - (i) prevent fraud;
 - (ii) ensure the accurate handling and canvassing of mail ballots; and
 - (iii) ensure that the secrecy of voted ballots is maintained.

History: En. Sec. 6, Ch. 196, L. 1985.

13-19-106. General requirements for mail ballot election. A mail ballot election must be conducted substantially as follows:

- (1) Subject to 13-12-202, official mail ballots must be prepared and all other initial procedures followed as provided by law, except that mail ballots must be paper ballots and are not required to have stubs.
- (2) An official ballot must be mailed to every qualified elector of the political subdivision conducting the election.
- (3) Each return/verification envelope must contain a form prescribed by the secretary of state for the elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306.
- (4) The elector shall mark the ballot and place it in a secrecy envelope.
- (5) The elector shall then place the secrecy envelope containing the elector's ballot in a return/verification envelope and shall return it by mailing it or delivering it in person to a place of deposit designated by the election administrator so that it is received before a specified time on election day.
- (6) Once returned, election officials shall first qualify the submitted ballot by examining the return/verification envelope to determine whether it is submitted by a qualified elector who has not previously voted.
- (7) If the ballot qualifies and is otherwise valid, officials shall then open the return/verification envelope and remove the secrecy envelope, which is then voted by depositing it unopened in an official ballot box.
- (8) After the close of polls on election day, voted ballots must be counted and canvassed as provided in chapter 15.

History: En. Sec. 3, Ch. 196, L. 1985; amd. Sec. 17, Ch. 591, L. 1991; amd. Sec. 1, Ch. 338, L. 1997; amd. Sec. 1, Ch. 546, L. 2001; amd. Sec. 76, Ch. 414, L. 2003; amd. Sec. 1, Ch. 443, L. 2003.

Part 2 Preelection Procedure

13-19-201. How election initiated. A proposal to conduct an election under this chapter may be initiated by either the election administrator or the appropriate governing body as provided in 13-19-202 through 13-19-204.

History: En. Sec. 7, Ch. 196, L. 1985.

13-19-202. Initiation by governing body. (1) A political subdivision may, by resolution of the governing body addressed to the election administrator, request that a particular election be conducted under the provisions of this chapter.

(2) No later than 70 days before election day, the governing body shall transmit its request to the election administrator, who shall determine whether it is economically and administratively feasible to conduct the requested election by mail ballot.

(3) Except as provided in 13-19-204, the decision to conduct an election under the provisions of this chapter is within the sole discretion of the election administrator.

(4) Within 5 days after receiving a request, the election administrator shall respond in writing, stating that the request is either granted or denied for reasons specified. If granted, the election administrator shall prepare a plan as provided in 13-19-205.

History: En. Sec. 8, Ch. 196, L. 1985.

13-19-203. Initiation by election administrator. (1) Even if no request has been received from the governing body concerned, the election administrator may conduct any election authorized by 13-19-104 under this chapter if, in his discretion, that would be the most economically and administratively feasible way of conducting the election in question.

(2) If he decides to conduct an election pursuant to subsection (1), the election administrator shall prepare a written plan as provided in 13-19-205 and forward a copy to the governing body concerned, together with a written statement informing it of his decision to conduct the election by mail ballot and the reasons therefor and the right of the governing body to object under 13-19-204.

History: En. Sec. 9, Ch. 196, L. 1985.

13-19-204. Objection of political subdivision. (1) A political subdivision may, by resolution of the governing body, object to the conduct of one of its elections under this chapter. The resolution must include a statement of the reasons for the objection.

(2) If such a resolution is filed with the election administrator no later than 55 days prior to election day, the election may not be conducted under this chapter.

History: En. Sec. 10, Ch. 196, L. 1985.

13-19-205. Written plan for conduct of election — amendments — approval procedures. (1) The election administrator shall prepare a written plan, including a timetable, for the conduct of the election and shall submit it to the secretary of state at least 60 days prior to the date set for the election.

(2) The plan may be amended by the election administrator any time prior to the 35th day before election day by notifying the secretary of state in writing of any changes.

(3) Within 5 days of receiving the plan and as soon as possible after receiving any amendments, the secretary of state shall approve, disapprove, or recommend changes to the plan or amendments.

(4) When the written plan has been approved, the election administrator shall proceed to conduct the election according to the approved plan.

History: En. Sec. 11, Ch. 196, L. 1985.

13-19-206. Distributing materials to electors — procedure. For each election conducted under this chapter, the election administrator shall:

(1) mail a single packet to every qualified elector of the political subdivision conducting the election;

(2) ensure that each packet contains only one each of the following:

(a) an official ballot, except that the election administrator may include separate ballots for each type of election being held concurrently;

(b) a secrecy envelope;

(c) a return/verification envelope; and

(d) complete written instructions for voting and returning ballots; and

(3) ensure that each packet is:

(a) addressed to a single individual elector at the most current address available from the official registration records; and

(b) deposited in the United States mail with sufficient prepaid postage for it to be delivered to the elector's address.

History: En. Sec. 13, Ch. 196, L. 1985; amd. Sec. 18, Ch. 591, L. 1991; amd. Sec. 2, Ch. 338, L. 1997.

13-19-207. When materials to be mailed. For any election conducted by mail, ballots must be mailed no sooner than the 25th day and no later than the 15th day before election day. All ballots must be mailed the same day.

History: En. Sec. 14, Ch. 196, L. 1985.

Part 3 Election Procedure

13-19-301. Voting mail ballots. (1) Upon receipt of his ballot, the elector may vote by:

- (a) marking the ballot in the manner specified;
- (b) placing the marked ballot in the secrecy envelope, free of any identifying marks;
- (c) placing the secrecy envelope containing a single ballot in the return/verification envelope;
- (d) executing the affidavit printed on the return/verification envelope; and
- (e) returning the return/verification envelope with the secrecy envelope containing the ballot enclosed, as provided in 13-19-306.

(2) For the purpose of this chapter, an official ballot is voted when, after the requirements of 13-19-310 and 13-19-311 have been satisfied, the return/verification envelope has been opened by election officials and the secrecy envelope containing the ballot has been deposited in the official ballot box.

History: En. Sec. 16, Ch. 196, L. 1985.

13-19-302. Proportional voting. The election administrator shall provide a method for proportional voting in his written plan for an election conducted under this chapter that requires votes to be cast in proportion to ownership or any factor other than one vote per person.

History: En. Sec. 12, Ch. 196, L. 1985.

13-19-303. Voting by elector when absent from place of residence during conduct of election. (1) A qualified elector who will be absent from the county during the time the election is being conducted may:

- (a) vote in person in the election administrator's office as soon as ballots are available and until noon the day before the ballots are scheduled to be mailed; or

- (b) make a written request, signed by the applicant and addressed to the election administrator, that the ballot be mailed to an address other than that which appears on the registration card. Written requests must be accepted until noon the day before the ballots are scheduled to be mailed.

(2) Ballots mailed to electors pursuant to this section must be mailed the same day that all other ballots are mailed.

History: En. Sec. 15, Ch. 196, L. 1985.

13-19-304. Voting by nonregistered electors. (1) For any election being conducted under this chapter by a political subdivision that allows individuals to vote who are not registered electors, such an individual may vote by appearing in person at the election administrator's office and demonstrating that he possesses the qualifications which entitle him to vote.

(2) An individual complying with subsection (1) before official ballots are available may leave a card with the election administrator containing his signature and the address to which his ballot is to be mailed. The signature provided must then be used for verification when the mail ballot is returned.

(3) An individual complying with subsection (1) after official ballots are available and before the close of the polls on election day must be permitted to vote at that time.

History: En. Sec. 23, Ch. 196, L. 1985.

13-19-305. Replacement ballots — procedures. (1) An elector may obtain a replacement ballot as provided in this section if his ballot is destroyed, spoiled, lost, or not received by the elector.

(2) An elector seeking a replacement ballot shall sign a sworn statement stating that the ballot was either destroyed, spoiled, lost, or not received and shall present the statement to the election administrator no later than 8 p.m. on election day.

(3) Upon receiving the sworn statement, the election administrator shall issue a replacement ballot to the elector. Each spoiled ballot must be returned before a new one may be issued.

(4) The election administrator shall designate his office or a central location in the political subdivision in which the election is conducted as the single location for obtaining a replacement ballot.

(5) A replacement ballot may also be issued pursuant to 13-19-313.

(6) The election administrator shall keep a record of each replacement ballot issued. If he later determines that any elector to whom a replacement ballot has been issued has attempted to vote more than once, he shall immediately notify the county attorney and the secretary of state of each instance.

History: En. Sec. 17, Ch. 196, L. 1985.

13-19-306. Returning marked ballots — when — where. (1) After complying with 13-19-301, an elector or his designee may return his ballot on or before election day by either:

(a) depositing the return/verification envelope in the United States mail, with sufficient postage affixed; or

(b) returning it to any place of deposit designated by the election administrator pursuant to 13-19-307.

(2) In order to have his ballot counted, each elector must return it in such a manner that it is received prior to 8 p.m. on election day.

History: En. Sec. 18, Ch. 196, L. 1985; amd. Sec. 19, Ch. 591, L. 1991.

13-19-307. Places of deposit. (1) The election administrator shall designate his office and may designate one or more places in the political subdivision in which the election is being conducted as places of deposit where ballots may be returned in person by the elector.

(2) Prior to election day, ballots may be returned to any designated place of deposit only during regular business hours.

(3) On election day, each location designated as a place of deposit must be open as provided in 13-1-106, and ballots may be returned during those hours.

(4) The election administrator may designate certain locations as election day places of deposit, and any location so designated shall function as a place of deposit only on election day.

(5) The election administrator shall provide each designated place of deposit with an official ballot transport box secured as provided by law.

History: En. Sec. 19, Ch. 196, L. 1985.

13-19-308. Disposition of ballots returned in person. Ballots returned by the elector in person must be processed as follows:

(1) If returned to the election administrator's office directly, the ballot must be processed in the same manner provided for ballots returned by mail except that, while the elector is present, officials shall:

(a) verify the signature pursuant to 13-19-310;

(b) resolve any questions as to the validity of the ballot; and

(c) deposit the unopened secrecy envelope containing the ballot in the official ballot box.

(2) If returned to a place of deposit other than the election administrator's office, the election official on location shall:

(a) keep a log of the names of all electors from whom he receives ballots and the names of the people who deliver the ballots;

(b) deposit the unopened return/verification envelope in the sealed ballot transport box provided for that purpose; and

(c) securely retain all ballots until they are transported to the election administrator's office. The transport boxes must then be opened and the ballots disposed of in the same manner provided for ballots returned by mail.

History: En. Sec. 20, Ch. 196, L. 1985; amd. Sec. 20, Ch. 591, L. 1991.

13-19-309. Disposition of ballots returned by mail. (1) Upon receipt of each return/verification envelope, election officials shall:

(a) compare the name with the official register to determine that the person has not previously voted;

(b) verify the signature on the affidavit in the manner provided by 13-19-310;

(c) open the return/verification envelope and retain it as an official record;

(d) remove and examine the secrecy envelope to determine if the ballot is valid pursuant to 13-19-311;

(e) if the ballot is valid, record the name of the elector in the official register as having voted; and

(f) deposit the unopened secrecy envelope containing the ballot in the official ballot box.

(2) If at any point there is a question concerning the validity of a particular ballot, the question must be resolved as provided in 13-19-314.

History: En. Sec. 21, Ch. 196, L. 1985; amd. Sec. 77, Ch. 414, L. 2003.

13-19-310. Signature verification — procedures. (1) The election administrator shall verify the signature of each elector by comparing the affidavit printed on the return/verification envelope to the signature on that elector's registration card or signature card provided under 13-19-304.

(2) If the election administrator is convinced that the individual signing the affidavit is the same as the one whose name appears on the registration card, he shall proceed to validate the ballot.

(3) If the election administrator is not convinced that the individual signing the return/verification envelope is the same as the one whose name appears on the registration card, he may not validate the ballot but instead shall:

(a) give notice to the elector as provided in 13-19-313; and

(b) if the discrepancy is not rectified to the election administrator's satisfaction, present the unopened envelope and the registration card to the canvassing board for a determination.

History: En. Sec. 22, Ch. 196, L. 1985.

13-19-311. Valid ballots — requirements. (1) Only valid ballots may be counted in an election conducted under this chapter.

(2) For the purpose of this chapter, a ballot is valid only if:

(a) it is sealed in the secrecy envelope and returned in the return/verification envelope;

(b) the elector's signature on the affidavit on the return/verification envelope is verified pursuant to 13-19-310; and

(c) it is received before 8 p.m. on election day.

(3) A ballot is invalid if:

(a) more than one ballot is enclosed in a single return/verification or secrecy envelope unless there are multiple elections being held at the same time and there is only one ballot for each election in the envelope; or

(b) any identifying marks are placed on the ballot by the elector.

(4) Failure of an elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address in conjunction with a mailed ballot, as provided in 13-19-106, invalidates an otherwise valid mailed ballot.

History: En. Sec. 24, Ch. 196, L. 1985; amd. Sec. 21, Ch. 591, L. 1991; amd. Sec. 3, Ch. 338, L. 1997.

13-19-312. Counting procedure. (1) Except as provided in subsection (2), after the close of voting on election day, the counting board appointed pursuant to 13-15-112 shall:

(a) open the official ballot boxes;

(b) open each secrecy envelope, removing the ballot; and

(c) proceed to count the votes as provided in chapter 15.

(2) On election day, the election administrator may begin the procedures described in subsection (1) before the polls close if the election administrator complies with the procedures described in 13-15-207(3).

History: En. Sec. 27, Ch. 196, L. 1985; amd. Sec. 22, Ch. 591, L. 1991; amd. Sec. 78, Ch. 414, L. 2003.

13-19-313. Notice to elector — opportunity to resolve questions. (1) As soon as possible after receipt of an elector's return/verification envelope, the election administrator shall give notice to the elector, either by telephone or by first-class mail, if the election administrator:

(a) is unable to verify the elector's signature under 13-19-310; or

(b) has discovered a procedural mistake made by the elector that would invalidate the elector's ballot under 13-19-311.

(2) The election administrator shall inform the elector that the elector may appear in person at the election administrator's office prior to 8 p.m. on election day and verify the signature or correct the mistake.

(3) Any elector appearing pursuant to subsection (2) must be permitted to:

(a) verify the elector's signature, after proof of identification, by affirming that the signature is in fact the elector's or by completing a new registration card containing the elector's current signature;

(b) correct any minor mistake if the correction would render the ballot valid; or

(c) if necessary, request and receive a replacement ballot and vote it at that time.

(4) If a mail ballot is returned, the election administrator shall investigate the reason for the return and mail a confirmation notice. The notice must be sent by forwardable, first-class mail with a postage-paid, return-addressed notice. If the confirmation notice is returned to the election administrator, the elector must be placed on an inactive list until that elector becomes a qualified elector.

History: En. Sec. 25, Ch. 196, L. 1985; amd. Sec. 10, Ch. 246, L. 1997; amd. Sec. 40, Ch. 475, L. 2003.

13-19-314. Resolving ballots in question. Any questions concerning the validity of a ballot or signature must be resolved in the following manner:

(1) If the election administrator is unable to determine without doubt whether a ballot is valid or invalid, the election administrator shall give notice to the elector as provided in 13-19-313.

(2) If, subsequent to following the procedure in 13-19-313, the election administrator is still unable to determine without doubt whether the ballot is valid or invalid, the election administrator shall present the issue for a determination to the counting board appointed pursuant to 13-15-112.

(3) If a majority of the counting board is unable to agree on whether the ballot is valid or invalid, it may not count the ballot in question, and the election administrator shall present the ballot to the board of canvassers for a determination of the issue.

(4) If a majority of the board of canvassers is unable to agree that the ballot is valid, the ballot is invalid and may not be counted.

History: En. Sec. 26, Ch. 196, L. 1985; amd. Sec. 79, Ch. 414, L. 2003.

CHAPTER 21 MONTANA ABSENT UNIFORMED SERVICES AND OVERSEAS ELECTOR VOTING ACT

Part 1 General Provisions

13-21-101. Short title. This chapter may be cited as the "Montana Absent Uniformed Services and Overseas Elector Voting Act".

History: En. Sec. 1, Ch. 557, L. 2003.

13-21-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Absent uniformed services elector" means an absent uniformed services voter pursuant to 42 U.S.C. 1973ff-6 who is:

(a) a member of the uniformed services on active duty who, by reason of the active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(b) a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; or

(c) a spouse or dependent of a member referred to in subsection (1)(a) or (1)(b) who, by reason of the member's active duty, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

(2) "Federal post card application" means the federal post card application prescribed pursuant to 42 U.S.C. 1973ff.

(3) "Federal write-in absentee ballot" means the federal write-in absentee ballot prescribed pursuant to 42 U.S.C. 1973ff-2.

(4) “Member of the merchant marine” means, pursuant to 42 U.S.C. 1973ff-6, a person, other than a member of the uniformed services or an individual employed, enrolled, or maintained on the Great Lakes of the inland waterways, who is:

(a) employed as an officer or crew member of a vessel documented under the laws of the United States, a vessel owned by the United States, or a vessel of a foreign-flag registry under charter to or control of the United States; or

(b) enrolled as an officer or crew member with the United States for employment or for training for employment or who is maintained by the United States for emergency relief service on a vessel described in subsection (4)(a).

(5) “Overseas elector” means an overseas voter pursuant to 42 U.S.C. 1973ff-6 who is:

(a) an absent uniformed services elector who by reason of active duty or service is absent from the United States on the date of the election involved;

(b) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(c) a person who resides outside the United States and would otherwise be qualified to vote in the last place in which the person was domiciled before leaving the United States.

(6) “Regular absentee ballot” means the absentee ballot prepared by the election administrator for any election.

(7) “Uniformed services” means, pursuant to 42 U.S.C. 1973ff-6, the U.S. army, navy, air force, marine corps, and coast guard, the commissioned corps of the U.S. public health service, and the commissioned corps of the U.S. national oceanic and atmospheric administration.

(8) “United States”, as used in the context of describing a geographical area, means, pursuant to 42 U.S.C. 1973ff-6, the several states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

(9) “United States elector” means an absent uniformed services elector or an overseas elector.

(10) “Voter registration form” means the form approved by the secretary of state that an elector may use to register to vote in Montana.

History: En. Sec. 2, Ch. 557, L. 2003.

13-21-103. Secretary of state designated as single point of contact — rulemaking.

(1) The office of the secretary of state is the state’s single point of contact responsible for providing information regarding voter registration and absentee ballot procedures to be used by a United States elector.

(2) The secretary of state shall, with the assistance of local election administrators, compile, make available to the general public, or forward to appropriate federal authorities any reports or information required to be compiled, made available, or forwarded pursuant to federal law.

(3) The secretary of state may adopt rules to implement the provisions of this chapter.

History: En. Sec. 3, Ch. 557, L. 2003; amd. Sec. 1, Ch. 157, L. 2007.

Compiler’s Comments

2007 Amendment: Chapter 157 inserted (3) concerning adoption of rules. Amendment effective October 1, 2007.

13-21-104. Adoption of rules — acceptance of funds. (1) The secretary of state shall adopt reasonable rules under the rulemaking provisions of the Montana Administrative Procedure Act to implement 13-21-207. The rules are binding upon election administrators. The rules must require compliance with the same time requirements or deadlines as for registration and voting by absentee ballot by use of the public mails. The rules must maintain the accuracy, integrity, and secrecy of the ballot process and must allow registration and voting by facsimile through use of a private corporation or other private entity for transmission of facsimile messages only if the secretary of state finds that the use is essential to the purposes of this chapter.

(2) The secretary of state may apply for and receive a grant of funds from any agency or office of the United States government or from any other public or private source and may use the money for the purpose of implementing this chapter.

History: En. Sec. 2(2), (3), Ch. 111, L. 1991; amd. Sec. 49, Ch. 42, L. 1997; amd. Sec. 3, Ch. 80, L. 1999; amd. Sec. 22, Ch. 557, L. 2003; Sec. 13-13-278, MCA 2001; redes. 13-21-104 by Sec. 24, Ch. 557, L. 2003.

Part 2 Absentee Voting

13-21-201. Registration of United States electors — simultaneous application for absentee ballot. (1) A United States elector may register with the election administrator in the elector's county of residence by properly completing, signing, and returning:

- (a) the voter registration form;
- (b) the federal post card application; or
- (c) the federal write-in absentee ballot as provided in 13-21-205.

(2) A registration application under subsection (1)(a) or (1)(b) must be received by the election administrator not less than 30 days before the election for the registration to be valid for the election. If the registration application is received less than 30 days before the election, the registration application must be processed for the next election.

(3) A registration application using a federal post card application or the federal write-in absentee ballot transmission envelope must be considered a simultaneous application for absentee ballots under 13-21-210.

History: (1)En. Sec. 25, Ch. 368, L. 1969; amd. Sec. 1, Ch. 396, L. 1975; amd. Sec. 40, Ch. 334, L. 1977; Sec. 23-3006, R.C.M. 1947; (2)En. Sec. 137, Ch. 368, L. 1969; Sec. 23-3719, R.C.M. 1947; R.C.M. 1947, 23-3006(7), 23-3719(2); amd. Sec. 31, Ch. 571, L. 1979; amd. Sec. 2, Ch. 396, L. 1985; amd. Sec. 1, Ch. 302, L. 1991; amd. Sec. 1, Ch. 164, L. 1999; amd. Sec. 10, Ch. 557, L. 2003; Sec. 13-2-212, MCA 2001; redes. 13-21-201 by Sec. 24, Ch. 557, L. 2003; amd. Sec. 2, Ch. 157, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 157 in (1)(c) at end substituted "as provided in 13-21-205" for "transmission envelope"; and in (2) in first sentence near middle substituted "subsection (1)(a) or (1)(b)" for "this section". Amendment effective October 1, 2007.

13-21-202. Classification of applications for regular absentee ballots — notification of elector. (1) Upon receipt by the election administrator of an application by a United States elector for a regular absentee ballot pursuant to 13-13-212 or 13-21-210, the election administrator shall:

(a) classify the application according to the precinct in which the elector resides or, if the information is insufficient to determine precinct of residence, assign an appropriate precinct;

(b) immediately enter all information in the registration records of the office and either file the federal post card application with regular registration forms or file a photocopy attached to a regular registration form on which the information has been entered. This information is sufficient to meet any identification requirements provided by law for an elector.

(c) send to the applicant by the fastest mail service available, which may include facsimile transmission or electronic mail, a notice that the elector has been registered and informing the elector that a regular absentee ballot is enclosed or that the elector will be mailed a regular absentee ballot for that election or for the next election in which the elector is entitled to vote under subsection (1) or, if the application is rejected, a notice that the application has been rejected and the reasons for the rejection.

(2) The election administrator may use photocopies of the federal post card application to complete all necessary records.

History: En. Sec. 139, Ch. 368, L. 1969; amd. Sec. 1, Ch. 250, L. 1971; R.C.M. 1947, 23-3721; amd. Sec. 33, Ch. 571, L. 1979; amd. Sec. 3, Ch. 396, L. 1985; amd. Sec. 11, Ch. 557, L. 2003; Sec. 13-2-214, MCA 2001; redes. 13-21-202 by Sec. 24, Ch. 557, L. 2003; amd. Sec. 3, Ch. 157, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 157 in (1) near middle after "application" inserted "by a United States elector for a regular absentee ballot"; and in (1)(c) near middle after "elector that a" inserted "regular absentee" and after "mailed" substituted "a regular" for "an". Amendment effective October 1, 2007.

13-21-203. Registration of United States electors after return. A United States elector who has returned to the elector's residence too late to register at the time when and place where registration is required is entitled to register for the purpose of voting at the next election after the date of the elector's return up to noon on the day before the election. The elector shall execute a sworn affidavit qualifying the elector under this section to be filed in the office of the elector's registration. The county registrar shall provide to the person registering under the provisions of this section a certificate stating the precinct in which the elector is entitled to vote. This certificate must be presented to the election judges of that precinct at the time of voting.

History: En. 23-3724 by Sec. 1, Ch. 247, L. 1971; R.C.M. 1947, 23-3724; amd. Sec. 12, Ch. 557, L. 2003; Sec. 13-2-215, MCA 2001; redes. 13-21-203 by Sec. 24, Ch. 557, L. 2003.

13-21-204. Repealed. Sec. 7, Ch. 157, L. 2007.

History: En. Sec. 1, Ch. 43, L. 1987; amd. Sec. 3, Ch. 302, L. 1991; amd. Sec. 3, Ch. 164, L. 1999; amd. Sec. 18, Ch. 557, L. 2003; Sec. 13-13-271, MCA 2001; redes. 13-21-204 by Sec. 24, Ch. 557, L. 2003.

13-21-205. Federal write-in absentee ballot. (1) A United States elector may register, if not already registered, and vote in any election by completing, signing, and returning a federal write-in absentee ballot and meeting the requirements in 13-21-206.

(2) (a) A United States elector voting a federal write-in absentee ballot for a federal general election may designate a candidate by writing in the name of the candidate or by writing in the name of the political party for which the elector is voting. A written designation of the political party must be counted as a vote for the candidate of that party.

(b) (i) Except as provided in subsection (2)(b)(ii), a United States elector may vote in any election for a public office other than for a federal office by using the addendum provided in the federal write-in absentee ballot and writing in the title of the office and the name of the candidate for whom the elector is voting.

(ii) If the elector is voting in a primary election, the elector shall identify the elector's political party affiliation as provided for in the appropriate section of the ballot. A vote cast by writing in the name of a candidate who is not affiliated with the elector's identified party is void and may not be counted.

(3) A vote may not be voided for reasons of misspellings, abbreviations, or other minor variations of the candidate's name.

(4) If the elector receives the regular absentee ballot after the elector has voted and mailed a federal write-in absentee ballot, the elector may vote and return the regular absentee ballot.

History: En. Sec. 1, Ch. 43, L. 1987; amd. Sec. 19, Ch. 557, L. 2003; Sec. 13-13-272, MCA 2001; redes. 13-21-205 by Sec. 24, Ch. 557, L. 2003; amd. Sec. 4, Ch. 157, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 157 inserted (1) concerning registration and voting using federal write-in absentee ballot; inserted (2)(b) concerning use of federal write-in absentee ballot and voting in primary election; in (4) after "absentee ballot" deleted "for the federal general election"; and made minor changes in style. Amendment effective October 1, 2007.

13-21-206. Counting of federal write-in absentee ballots. (1) A federal write-in absentee ballot received by an election administrator may be counted only if:

(a) the elector's voter registration and identification information is sufficient to determine that the elector is eligible to vote in the election;

(b) the ballot is not received before regular absentee ballots have been printed pursuant to 13-13-205;

(c) the election administrator has not received a regular absentee ballot from the elector by 8 p.m. on election day; and

(d) the ballot is sent by 8 p.m. on election day and is received by 3 p.m. on the Monday following the election.

(2) Federal write-in absentee ballots received before the close of the polls on election day may not be counted until the polls have closed.

History: En. Sec. 1, Ch. 43, L. 1987; amd. Sec. 4, Ch. 164, L. 1999; amd. Sec. 20, Ch. 557, L. 2003; Sec. 13-13-273, MCA 2001; redes. 13-21-206 by Sec. 24, Ch. 557, L. 2003; amd. Sec. 21, Ch. 586, L. 2005; amd. Sec. 5, Ch. 157, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 157 deleted former (1)(a) that read: "(a) a valid application was made by the elector pursuant to 13-21-210"; inserted (1)(a) concerning registration and identification information; inserted (1)(b) concerning receipt of ballot before printing of regular absentee ballot; and made minor changes in style. Amendment effective October 1, 2007.

13-21-207. Registration and voting by facsimile and internet authorized. Notwithstanding other provisions of this title, each election administrator may, in any primary election, general election, and special election, take the following acts by facsimile transmission, if facsimile facilities are available, or electronically through the internet for a United States elector, if internet facilities that provide for secrecy are available, in place of the public mails:

(1) register an individual to vote;

- (2) give notice of registration;
- (3) receive requests for an absentee ballot;
- (4) transmit absentee ballots to electors; and
- (5) receive absentee ballots from electors.

History: En. Sec. 2(1), Ch. 111, L. 1991; amd. Sec. 2, Ch. 80, L. 1999; amd. Sec. 21, Ch. 557, L. 2003; Sec. 13-13-277, MCA 2001; redes. 13-21-207 by Sec. 24, Ch. 557, L. 2003.

13-21-208 and 13-21-209 reserved.

13-21-210. Application for absentee ballots. (1) (a) A United States elector may apply for a regular absentee ballot as follows:

(i) by making a written request, which must include the elector's birth date and signature; or

(ii) by properly completing, signing, and returning to the election administrator the federal post card application.

(b) A person who holds a power of attorney from an absent uniformed services elector may apply for an absentee ballot for that election on behalf of the uniformed services elector. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) An application for a regular absentee ballot must be received by the appropriate county election administrator not less than 30 days before the date of an election. An application for a regular absentee ballot that is received less than 30 days before the date of an election must be processed for the next election.

(3) An application under this section is valid for all state and local elections in the calendar year in which the application is made and the next two regularly scheduled federal general elections.

(4) The elector's county election administrator shall provide the elector with a regular absentee ballot for the elections described in subsection (3) as soon as the ballots are printed.

History: En. Sec. 4, Ch. 557, L. 2003; amd. Sec. 6, Ch. 157, L. 2007; amd. Sec. 2, Ch. 221, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 157 deleted former (1)(c) that read: "(c) by properly completing, signing, and returning to the appropriate county election administrator the federal write-in absentee ballot transmission envelope"; in (2) in first sentence near beginning substituted "regular" for "federal write-in" and in second sentence near beginning after "application" inserted "for a regular absentee ballot that is"; in (4) at end substituted "are printed" for "become available"; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 221 inserted (1)(b) concerning power of attorney for absent uniformed services elector; and made minor changes in style. Amendment effective July 1, 2007.

13-21-211. Replacement absentee ballots. A United States elector who has made a request for an absentee ballot pursuant to 13-21-210 may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made to the election administrator by telephone, letter, facsimile transmission, or electronic mail.

History: En. Sec. 5, Ch. 557, L. 2003.

13-21-212. Mailing ballots to United States elector. Ballots mailed to a United States elector must be handled as prescribed in 13-13-214, except that both the envelope in which a ballot is mailed to the elector and the return envelope for the ballot must have printed across its face the information and graphics and be of the color prescribed by the secretary of state consistent with the regulations established by the federal election commission, the U.S. postal service, or other federal agency.

History: En. Sec. 6, Ch. 557, L. 2003.

13-21-213. Report on absentee ballots. (1) Within 60 days after the date of each regularly scheduled federal general election, each county election administrator shall report to the secretary of state:

(a) the number of regular absentee ballots transmitted by the election administrator to United States electors for the election; and

(b) the number of regular absentee ballots cast and returned to the election administrator for the election from United States electors.

(2) The secretary of state may prescribe a standardized format for the report.

(3) Within 90 days after the date of each regularly scheduled federal general election, the secretary of state shall report to the federal election assistance commission, established pursuant to the Help America Vote Act of 2002, Public Law 107-252, or its successor a statewide report containing the information provided under subsection (1). The report must be made in the format prescribed by the federal election assistance commission.

History: En. Sec. 7, Ch. 557, L. 2003.

CHAPTER 22 YOUTH VOTING ACT

Part 1 General Provisions

13-22-101. Short title. This chapter may be cited as the “Youth Voting Act”.

History: En. Sec. 1, Ch. 348, L. 1991.

13-22-102. Purpose and intent. The intent of the legislature is to establish a nonpartisan youth voting program that will:

- (1) provide the youth of Montana with practical experience in the democratic process;
- (2) increase the likelihood that Montana’s youth will participate in the process as adult voters and encourage the participation of more parents in elections;
- (3) not benefit any elected official, candidate for elective office, political party, campaign for or against any ballot issue, or any proposed ballot issue attempting to qualify for placement on a ballot; and
- (4) be entirely funded through private donations.

History: En. Sec. 2, Ch. 348, L. 1991; amd. Sec. 4, Ch. 481, L. 2007.

Compiler’s Comments

2007 Amendment: Chapter 481 in (3) near middle after “or any” substituted “proposed ballot issue” for “measure”. Amendment effective May 11, 2007.

13-22-103. Youth voting program established — program coordination — school participation. (1) There is a youth voting program for minors to provide young Montanans direct experience in the voting process.

(2) The secretary of state, in consultation with the superintendent of public instruction, shall solicit county election administrators and schools throughout the state to participate in the youth voting program. The secretary of state and the superintendent of public instruction shall confer with the participating county election administrators and county superintendents of schools and, from among interested schools, shall facilitate the participation of as many schools in the program as available funds and other circumstances allow. A designated school may, at any time, decline to participate by notifying the secretary of state in writing.

History: En. Sec. 3, Ch. 348, L. 1991.

13-22-104. Program development. (1) The secretary of state and the superintendent of public instruction shall compile a program and establish a process whereby:

- (a) students are instructed on the electoral process, the importance of voting, and how to mark and cast a ballot;
- (b) students are educated about current issues in a manner appropriate for each grade level involved;
- (c) students cast facsimile or mock ballots at a location designated as a youth voting location or while accompanying an eligible voter to a polling place during regular elections; and
- (d) ballots cast by students at elections are counted and the results are made available to all participating schools.

(2) The program must be presented to participating schools in a nonpartisan, nonbiased, and informative manner.

History: En. Sec. 4, Ch. 348, L. 1991; amd. Sec. 1, Ch. 142, L. 1997.

13-22-105. Responsibilities of participating schools. Participating schools shall, in a timely manner, provide to students and their parents or guardians instruction and guidance on

how to participate in the program, youth voter registration procedures and deadlines, a list of candidates and issues, and polling and balloting procedures.

History: En. Sec. 5, Ch. 348, L. 1991.

13-22-106. Polling place procedures. (1) The secretary of state and the superintendent of public instruction shall work with participating schools or county election officials, as necessary, to provide that:

(a) facsimile or mock ballots are distributed to locations designated as youth voting locations;

(b) participating students accompanied by an eligible voter are allowed to cast ballots in the youth election at regular polling places; and

(c) student ballots are counted and the results are announced to the participating schools.

(2) The provisions of this section must be carried out in a manner that will not interfere with the normal voting process or established polling place procedures.

History: En. Sec. 6, Ch. 348, L. 1991; amd. Sec. 2, Ch. 142, L. 1997.

13-22-107. Funding. (1) Except for compensation for time spent by employees of the secretary of state and the superintendent of public instruction, public money may not be used to support or fund the youth voting program established in this chapter.

(2) A nonprofit corporation may be formed subject to the provisions of Title 35, chapter 2, to solicit donations from private sources. Money solicited under this subsection must be used only for the youth voting program.

History: En. Sec. 7, Ch. 348, L. 1991; amd. Sec. 41, Ch. 475, L. 2003.

13-22-108. Reports. (1) Each biennium, the secretary of state shall provide, upon request, a report to the legislature outlining the program's effectiveness in achieving its objectives.

(2) Participating schools and agencies shall provide to the secretary of state information regarding the youth voting program for the secretary of state's report to the legislature.

History: En. Sec. 8, Ch. 348, L. 1991.

CHAPTER 36 CONTESTS

Part 1 General Provisions

13-36-101. Grounds for contest of nomination or election to public office. An elector may contest the right of any person to any nomination or election to public office for which the elector has the right to vote, for any of the following causes:

(1) on the ground of a deliberate, serious, and material violation of any provision of the law relating to nominations or elections;

(2) whenever the person whose right is contested was not, at the time of the election, eligible to such office;

(3) on account of illegal votes or an erroneous or fraudulent count or canvass of votes.

History: En. Sec. 45, Init. Act, Nov. 1912; re-en. Sec. 10810, R.C.M. 1921; re-en. Sec. 10810, R.C.M. 1935; Sec. 94-1464, R.C.M. 1947; redes. 23-4763 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 59, Ch. 365, L. 1977; R.C.M. 1947, 23-4763; amd. Sec. 224, Ch. 571, L. 1979.

13-36-102. Time for commencing contest. (1) Five days or less after a candidate has been certified as nominated, a person wishing to contest the nomination to any public office shall give notice in writing to the candidate whose nomination he intends to contest, briefly stating the cause for the contest. The contestant shall make application to the district court in the county where the contest is to be had. The judge shall then set the time for the hearing. The contestant shall serve notice 3 days before the hearing is scheduled. The notice shall state the time and place of the hearing.

(2) Any action to contest the right of a candidate to be declared elected to an office or to annul and set aside such election or to remove from or deprive any person of an office of which he is the incumbent for any offense mentioned in this title must, unless a different time is stated, be commenced within 1 year after the day of election at which such offense was committed.

History: (1)En. Sec. 71, Ch. 368, L. 1969; amd. Sec. 23, Ch. 365, L. 1977; Sec. 23-3316, R.C.M. 1947; (2)En. Sec. 40, Init. Act, Nov. 1912; re-en. Sec. 10805, R.C.M. 1921; re-en. Sec. 10805, R.C.M. 1935; Sec. 94-1459, R.C.M. 1947; reded. 23-4759 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 57, Ch. 365, L. 1977; Sec. 23-4759, R.C.M. 1947; R.C.M. 1947, 23-3316(1) thru (3), 23-4759; amd. Sec. 225, Ch. 571, L. 1979; amd. Sec. 58, Ch. 575, L. 1981.

13-36-103. Court having jurisdiction of proceedings. An application for filing a statement, payment of a claim, or correction of an error or false recital in a filed statement or an action or proceeding to annul and set aside the election of any person declared elected to an office or to remove or deprive any person of his office for an offense mentioned in this title or any petition to excuse any person or candidate in accordance with the power of the court to excuse, as provided in 13-36-209, must be made or filed in the district court of the county in which the certificate, declaration, or acceptance of his nomination as a candidate for the office to which he is declared nominated or elected is filed or in which the incumbent resides.

History: En. Sec. 41, Init. Act, Nov. 1912; re-en. Sec. 10806, R.C.M. 1921; re-en. Sec. 10806, R.C.M. 1935; Sec. 94-1460, R.C.M. 1947; amd. and reded. 23-4760 by Sec. 25, Ch. 513, L. 1973; amd. Sec. 58, Ch. 365, L. 1977; R.C.M. 1947, 23-4760; amd. Sec. 226, Ch. 571, L. 1979.

13-36-104. Nomination contests. In the case of nomination contests, the judge of the district court shall hear and determine the case and make all necessary orders for the trial of the case and carrying his judgment into effect. The order of the judge shall express the will of a majority of the legal voters of the political party, as indicated by their votes, disregarding technicalities or errors in spelling. Each party is entitled to subpoenas. The registrar shall issue a certificate to the person declared nominated by the court. The certificate shall be conclusive evidence of the right of the person to hold the nomination.

History: En. Sec. 71, Ch. 368, L. 1969; amd. Sec. 23, Ch. 365, L. 1977; R.C.M. 1947, 23-3316(4) thru (6).

Part 2 Procedure

13-36-201. Contents of contest petition. Any petition contesting the right of any person to a nomination or election shall set forth the name of every person whose election is contested and the grounds of the contest. The petition shall not thereafter be amended, except by leave of the court.

History: En. Sec. 48, Init. Act, Nov. 1912; re-en. Sec. 10813, R.C.M. 1921; re-en. Sec. 10813, R.C.M. 1935; Sec. 94-1467, R.C.M. 1947; reded. 23-4766 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4766(part).

13-36-202. Reception of illegal votes — allegations and evidence. When the reception of illegal votes is alleged as a cause of contest, it shall be sufficient to state generally that in one or more specified voting precincts illegal votes were given to the candidate whose nomination or election is contested which, if taken from him, will reduce the number of his legal votes below the number of legal votes given to some other candidate for the same office. No testimony shall be received of any illegal votes unless the party contesting such election delivers to the opposite party, at least 3 days before such trial, a written list of the number of illegal votes (and by whom given) which he intends to prove on such trial. This provision shall not prevent the contestant from offering evidence of illegal votes not included in such statement if he did not know and by reasonable diligence was unable to learn of such additional illegal votes (and by whom they were given) before delivering such written list.

History: En. Sec. 47, Init. Act, Nov. 1912; re-en. Sec. 10812, R.C.M. 1921; re-en. Sec. 10812, R.C.M. 1935; Sec. 94-1466, R.C.M. 1947; reded. 23-4765 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4765; amd. Sec. 227, Ch. 571, L. 1979.

13-36-203. Form of complaint. (1) A petition or complaint filed under the provisions of this chapter is sufficient if it is in substantially the following form:

In the District Court of the
.... Judicial District,
for the County of ..., State of Montana.

A B (or A B and C D), Contestants,

vs.

E F, Contestee.

The petition of the contestant (or contestants) named above alleges:

That an election was held (in the state, district, county, or city of), on the day of, 20..., for the (nomination of a candidate for) (or election of a) (state the office).

That and were candidates at the election and the board of canvassers has returned as being nominated (or elected) at the election.

That contestant A B voted (or had a right to vote, as the case may be) at the election (or claims to have had a right to be returned as the nominee or officer elected or nominated at the election or was a candidate at the election, as the case may be) and that contestant C D (here state in a similar manner the right of each contestant).

The contestant (or contestants) further allege (here state the facts and grounds on which the contestants rely).

The contestants ask that it be determined by the court that.... was not nominated (or elected) and that the election was void or that A B or C D, as the case may be, was nominated (or elected) and ask for other relief that the court may find appropriate.

(2) The complaint must be verified by the affidavit of one of the petitioners in the manner required by law for the verification of complaints in civil cases.

History: En. Sec. 53, Init. Act, Nov. 1912; re-en. Sec. 10818, R.C.M. 1921; re-en. Sec. 10818, R.C.M. 1935; Sec. 94-1472, R.C.M. 1947; redes. 23-4771 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4771; amd. Sec. 23, Ch. 51, L. 1999.

13-36-204. Bond required. Before any proceeding on the petition, the petitioner shall give bond to the state in such sum as the court may order, not exceeding \$2,000, with not less than two sureties, who shall justify in the manner required of sureties on bail bonds, conditioned to pay all costs, disbursements, and attorney's fees that may be awarded against him if he shall not prevail.

History: En. Sec. 48, Init. Act, Nov. 1912; re-en. Sec. 10813, R.C.M. 1921; re-en. Sec. 10813, R.C.M. 1935; Sec. 94-1467, R.C.M. 1947; redes. 23-4766 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4766(part).

13-36-205. Recovery of costs. In any contest, the prevailing party may recover his costs, disbursements, and reasonable attorney's fees. Costs, disbursements, and attorney's fees in all such cases shall be in the discretion of the court. In case judgment is rendered against the petitioner, it shall also be rendered against the sureties on the bond.

History: En. Sec. 48, Init. Act, Nov. 1912; re-en. Sec. 10813, R.C.M. 1921; re-en. Sec. 10813, R.C.M. 1935; Sec. 94-1467, R.C.M. 1947; redes. 23-4766 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4766(part); amd. Sec. 228, Ch. 571, L. 1979.

13-36-206. Notice of filing — prompt hearing. On the filing of any such petition, the clerk shall immediately notify the judge of the court and issue a citation to the person whose nomination or office is contested, citing him to appear and answer not less than 3 or more than 7 days after the date of filing the petition. The court shall hear said cause, and every such contest shall take precedence over all other business on the court docket and shall be tried and disposed of with all convenient dispatch. The court shall always be deemed in session for the trial of such cases.

History: En. Sec. 48, Init. Act, Nov. 1912; re-en. Sec. 10813, R.C.M. 1921; re-en. Sec. 10813, R.C.M. 1935; Sec. 94-1467, R.C.M. 1947; redes. 23-4766 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4766(part).

13-36-207. Hearing of contest. The petitioner (contestant) and the contestee may appear and produce evidence at the hearing, but no person other than the petitioner and contestee may be made a party to the proceedings on such petition and no person other than the parties and their attorneys may be heard thereon except by order of the court. If more than one petition is pending or the election of more than one person is contested, the court may in its discretion order the cases to be heard together and may apportion the costs, disbursements, and attorney's fees between them and shall finally determine all questions of law and fact, except that the judge may in his discretion impanel a jury to decide on questions of fact. In the case of nominations or elections other than for federal congressional offices, the court shall immediately certify its decision to the governing body or official issuing certificates of nomination or election and the governing body or official shall thereupon issue certificates of nomination or election to the person or persons entitled thereto by the court's decision. If judgment of ouster against a defendant is rendered, the nomination or office shall be by the judgment declared vacant, except as provided in 13-36-212, and shall thereupon be filled by a new election or by appointment as may be provided by law regarding vacancies in such nomination or office.

History: En. Sec. 49, Init. Act, Nov. 1912; re-en. Sec. 10814, R.C.M. 1921; re-en. Sec. 10814, R.C.M. 1935; Sec. 94-1468, R.C.M. 1947; redes. 23-4767 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 60, Ch. 365, L. 1977; R.C.M. 1947, 23-4767; amd. Sec. 229, Ch. 571, L. 1979.

13-36-208. Advancement of cases — dismissal — privileges of witnesses. Proceedings under this title shall be advanced on the docket upon request of either party for speedy trial, but the court may postpone or continue the trial if necessary, and in case of such continuance or postponement, the court may impose costs in its discretion as a condition thereof. No petition may be dismissed without the consent of the county attorney unless the same is dismissed by the court. No person may be excused from testifying or producing papers or documents on the ground that his testimony or the production of papers or documents will tend to criminate him; but no admission, evidence, or paper made or advanced or produced by such person or any evidence that is the direct result of such evidence or information that he may have so given may be offered or used against him in any civil or criminal prosecution, except in a prosecution for perjury committed in such testimony.

History: En. Sec. 52, Init. Act, Nov. 1912; re-en. Sec. 10817, R.C.M. 1921; re-en. Sec. 10817, R.C.M. 1935; Sec. 94-1471, R.C.M. 1947; redes. 23-4770 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 61, Ch. 365, L. 1977; R.C.M. 1947, 23-4770.

13-36-209. Forfeiture of nomination or office for violation of law — when inappropriate. If, upon the trial of any action or proceeding under the provisions of this title to contest the right of any person to be declared nominated or elected to any office or to annul or set aside such nomination or election or to remove a person from his office, it appears from the evidence that the offense complained of was not committed by the candidate or with his knowledge or consent or was committed without his sanction or connivance and that all reasonable means for preventing the commission of such offense at such election were taken by and on behalf of the candidate; that the offense or offenses complained of were trivial, unimportant, and limited in character and that in all other respects his participation in the election was free from such offenses or illegal acts; or that any act or omission of the candidate arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature and in any case did not arise from any want of good faith; and under the circumstances it seems to the court to be unjust that the candidate forfeit his nomination or office or be deprived of any office of which he is the incumbent, then the nomination or election of the candidate is not by reason of such offense or omission complained of void, nor may the candidate be removed from or deprived of his office.

History: En. Sec. 38, Init. Act, Nov. 1912; re-en. Sec. 10803, R.C.M. 1921; re-en. Sec. 10803, R.C.M. 1935; Sec. 94-1457, R.C.M. 1947; redes. 23-4757 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 55, Ch. 365, L. 1977; R.C.M. 1947, 23-4757.

13-36-210. Punishment. If, upon the trial of any action or proceeding under the provisions of this title to contest the right of any person to be declared to be nominated to an office or elected to an office or to annul and set aside such election or to remove any person from his office, it appears that such person was guilty of any corrupt practice, illegal act, or undue influence in or about such nomination or election, he shall be punished by being deprived of the nomination or office, as the case may be, and the vacancy therein shall be filled in the manner provided by law. The only exceptions to this judgment shall be those provided in 13-36-209. Such judgment does not prevent the candidate or officer from being proceeded against by indictment or criminal information for any such act or acts.

History: En. Sec. 39, Init. Act, Nov. 1912; re-en. Sec. 10804, R.C.M. 1921; re-en. Sec. 10804, R.C.M. 1935; Sec. 94-1458, R.C.M. 1947; redes. 23-4758 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 56, Ch. 365, L. 1977; R.C.M. 1947, 23-4758.

13-36-211. When nomination or election not to be vacated. Nothing in the ground of contest specified in 13-36-101(3) is to be so construed as to authorize a nomination or election to be set aside on account of illegal votes, unless it appear either:

(1) that the candidate or nominee whose right is contested had knowledge of or connived at such illegal votes; or

(2) that the number of illegal votes given to the person whose right to the nomination or office is contested, if taken from him, would reduce the number of his legal votes below the

number of votes given to some other person for the same nomination or office, after deducting therefrom the illegal votes which may be shown to have been given to such other person.

History: En. Sec. 46, Init. Act, Nov. 1912; re-en. Sec. 10811, R.C.M. 1921; re-en. Sec. 10811, R.C.M. 1935; Sec. 94-1465, R.C.M. 1947; redes. 23-4764 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4764.

13-36-212. Declaration of result of election after rejection of illegal votes. If, in any case of a contest on the ground of illegal votes, it appears that a person other than the one returned has the highest number of legal votes after the illegal votes have been eliminated, the court must declare such person nominated or elected, as the case may be.

History: En. Sec. 44, Init. Act, Nov. 1912; re-en. Sec. 10809, R.C.M. 1921; re-en. Sec. 10809, R.C.M. 1935; Sec. 94-1463, R.C.M. 1947; redes. 23-4762 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4762.

TITLE 15

TAXATION

CHAPTER 1 TAX ADMINISTRATION

Part 1 General Provisions

15-1-101. Definitions. (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

- (a) The term “agricultural” refers to:
 - (i) the production of food, feed, and fiber commodities, livestock and poultry, bees, biological control insects, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and
 - (ii) the raising of domestic animals and wildlife in domestication or a captive environment.
- (b) The term “assessed value” means the value of property as defined in 15-8-111.
- (c) The term “average wholesale value” means the value to a dealer prior to reconditioning and the profit margin shown in national appraisal guides and manuals or the valuation schedules of the department.
- (d) (i) The term “commercial”, when used to describe property, means property used or owned by a business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, except property described in subsection (1)(d)(ii).
- (ii) The following types of property are not commercial:
 - (A) agricultural lands;
 - (B) timberlands and forest lands;
 - (C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;
 - (D) mobile homes and manufactured homes used exclusively as a residence except when held by a distributor or dealer as stock in trade; and
 - (E) all property described in 15-6-135.
- (e) The term “comparable property” means property that:
 - (i) has similar use, function, and utility;
 - (ii) is influenced by the same set of economic trends and physical, governmental, and social factors; and
 - (iii) has the potential of a similar highest and best use.
- (f) The term “credit” means solvent debts, secured or unsecured, owing to a person.
- (g) (i) “Department”, except as provided in subsection (1)(g)(ii), means the department of revenue provided for in 2-15-1301.

(ii) In chapters 70 and 71, department means the department of transportation provided for in 2-15-2501.

(h) The terms “gas” and “natural gas” are synonymous and mean gas as defined in 82-1-111(2). The terms include all natural gases and all other fluid hydrocarbons, including methane gas or any other natural gas found in any coal formation.

(i) The term “improvements” includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department determines that the permanency of location of a mobile home, manufactured home, or housetrailer has been established, the mobile home, manufactured home, or housetrailer is presumed to be an improvement to real property. A mobile home, manufactured home, or housetrailer may be determined to be permanently located only when it is attached to a foundation that cannot feasibly be relocated and only when the wheels are removed.

(j) The term “leasehold improvements” means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification, and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on leasehold improvements are a lien only on the leasehold improvements.

(k) The term “livestock” means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas, bison, ostriches, rheas, emus, and domestic ungulates.

(l) (i) The term “manufactured home” means a residential dwelling built in a factory in accordance with the United States department of housing and urban development code and the federal Manufactured Home Construction and Safety Standards.

(ii) A manufactured home does not include a mobile home, as defined in subsection (1)(m), or a mobile home or housetrailer constructed before the federal Manufactured Home Construction and Safety Standards went into effect on June 15, 1976.

(m) The term “mobile home” means forms of housing known as “trailers”, “housetrailer”, or “trailer coaches” exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any trailer, housetrailer, or trailer coach up to 8 feet in width or 45 feet in length used as a principal residence.

(n) The term “personal property” includes everything that is the subject of ownership but that is not included within the meaning of the terms “real estate” and “improvements” and “intangible personal property” as that term is defined in 15-6-218.

(o) The term “poultry” includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(p) The term “property” includes money, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition may not be construed to authorize the taxation of the stocks of a company or corporation when the property of the company or corporation represented by the stocks is within the state and has been taxed.

(q) The term “real estate” includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8;

(iii) all timber belonging to individuals or corporations growing or being on the lands of the United States; and

(iv) all rights and privileges appertaining to mines, minerals, quarries, and timber.

(r) “Recreational” means hunting, fishing, swimming, boating, waterskiing, camping, biking, hiking, and winter sports, including but not limited to skiing, skating, and snowmobiling.

(s) “Research and development firm” means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(t) The term “stock in trade” means any mobile home, manufactured home, or housetrailer that is listed by the dealer as inventory and that is offered for sale, is unoccupied, and is not

located on a permanent foundation. Inventory does not have to be located at the business location of a dealer or a distributor.

(u) The term “taxable value” means the percentage of market or assessed value as provided for in Title 15, chapter 6, part 1.

(2) The phrase “municipal corporation” or “municipality” or “taxing unit” includes a county, city, incorporated town, township, school district, irrigation district, or drainage district or a person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term “state board” or “board” when used without other qualification means the state tax appeal board.

History: (1)En. Sec. 4, p. 74, L. 1891; re-en. Sec. 3680, Pol. C. 1895; re-en. Sec. 2501, Rev. C. 1907; re-en. Sec. 1996, R.C.M. 1921; Cal. Pol. C. Sec. 3617; re-en. Sec. 1996, R.C.M. 1935; amd. Sec. 1, Ch. 99, L. 1939; amd. Sec. 1, Ch. 296, L. 1967; amd. Sec. 1, Ch. 450, L. 1975; amd. Sec. 1, Ch. 498, L. 1977; amd. Sec. 48, Ch. 566, L. 1977; Sec. 84-101, R.C.M. 1947; (2), (3)En. Sec. 4, Ch. 3, L. 1923; re-en. Sec. 2122.4, R.C.M. 1935; amd. Sec. 48, Ch. 405, L. 1973; amd. Sec. 3, Ch. 52, L. 1977; Sec. 84-704, R.C.M. 1947; R.C.M. 1947, 84-101, 84-704; amd. Sec. 1, Ch. 39, L. 1979; amd. Sec. 14, Ch. 693, L. 1979; amd. Sec. 1, Ch. 578, L. 1981; amd. Sec. 2, Ch. 488, L. 1983; amd. Sec. 1, Ch. 632, L. 1983; amd. Sec. 1, Ch. 20, L. 1985; amd. Sec. 1, Ch. 570, L. 1985; amd. Sec. 1, Ch. 743, L. 1985; amd. Sec. 35, Ch. 370, L. 1987; amd. Sec. 1, Ch. 613, L. 1987; amd. Sec. 2, Ch. 659, L. 1987; amd. Sec. 1, Ch. 10, Sp. L. June 1989; amd. Sec. 169, Ch. 411, L. 1991; amd. Sec. 6, Ch. 680, L. 1991; amd. Sec. 1, Ch. 705, L. 1991; amd. Sec. 8, Ch. 783, L. 1991; amd. Sec. 4, Ch. 379, L. 1993; amd. Sec. 1, Ch. 417, L. 1993; amd. Sec. 32, Ch. 27, Sp. L. November 1993; amd. Sec. 1, Ch. 206, L. 1995; amd. Sec. 1, Ch. 561, L. 1995; amd. Sec. 1, Ch. 49, L. 1997; amd. Sec. 6, Ch. 200, L. 1997; amd. Sec. 10, Ch. 285, L. 1999; amd. Sec. 2, Ch. 583, L. 1999; amd. Sec. 1, Ch. 577, L. 2003; amd. Sec. 3, Ch. 542, L. 2005; amd. Sec. 9, Ch. 596, L. 2005.

15-1-111. (Temporary) Reimbursement to local governments and schools — duties of department and county treasurer — statutory appropriation. (1) Prior to September 1, 1990, the department’s agent in the county shall supply the following information to the department for each taxing jurisdiction within the county:

- (a) the number of mills levied in the jurisdiction for tax year 1989;
- (b) the number of mills levied in the jurisdiction for tax year 1990;
- (c) the total taxable valuation for tax years 1989 and 1990, reported separately for each year, of all personal property not secured by real property; and
- (d) the total taxable valuation for tax years 1989 and 1990, reported separately for each year, of all personal property secured by real property.

(2) After receipt of the information from its agent, the department shall calculate the amount of revenue lost to each taxing jurisdiction, using current year mill levies, due to the annual reduction in personal property tax rates set forth in 15-6-138, prior to 1994, and any reduction in taxes based upon recalculation of the effective tax rate for property in 15-6-145, prior to 1994. The department shall total the amounts for all taxing jurisdictions within the county.

(3) (a) The department shall remit to the county treasurer 50% of the amount of revenue reimbursable, determined pursuant to subsection (1), on or before November 30 and the remaining 50% on or before May 31.

(b) For tax year 1993 through tax year 1998, the department shall remit to the county treasurer of each county the same amount remitted to the county treasurer for the fiscal year 1991, as adjusted by the result of dissolved or combined taxing jurisdictions, as provided for in subsection (7). Fifty percent of the amount must be remitted on or before November 30 and the remaining 50% on or before May 31.

(c) (i) For tax year 1999 through tax year 2008, the department shall remit to the county treasurer of each county the same amount remitted to the county treasurer for the fiscal year 1991, progressively reduced by 10% of the 1991 amount each year, in accordance with the following schedule:

Tax Year	Percentage of 1991 Remittance Amount
1999	90
2000	80
2001	70
2002	60

2003	50
2004	40
2005	30
2006	20
2007	10
2008 and following years	0

(ii) The amount remitted must be adjusted by the result of dissolved or combined taxing jurisdictions, as provided for in subsection (7). Fifty percent of the amount must be remitted on or before November 30 and the remaining 50% on or before May 31.

(4) Upon receipt of the reimbursement from the department, the county treasurer shall distribute the reimbursement to each taxing jurisdiction as calculated by the department.

(5) (a) For the purposes of this section and subject to subsection (7), "taxing jurisdiction" means a jurisdiction levying mills against personal property and includes but is not limited to a county, city, school district, tax increment financing district, and miscellaneous taxing district.

(b) The term does not include county or state school equalization levies provided for in 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439.

(6) The amounts necessary for the administration of this section are statutorily appropriated, as provided in 17-7-502, from the general fund to reimburse eligible taxing jurisdictions for reductions in tax rates on personal property.

(7) The following apply to taxing jurisdictions that were altered after tax year 1989:

(a) A taxing jurisdiction that existed in tax year 1989 and that no longer exists is not entitled to reimbursement under this section.

(b) A taxing jurisdiction that existed in tax year 1989 and that is split into two or more taxing jurisdictions or that is annexed to or is consolidated with another taxing jurisdiction is entitled to reimbursement based on the portion of 1989 taxable value within each new taxing jurisdiction. The department shall determine the portion of 1989 taxable value located in each taxing jurisdiction.

(c) A taxing jurisdiction that did not exist in tax year 1989 is not entitled to reimbursement under this section unless the jurisdiction was created as described in subsection (7)(b). (*Repealed effective July 1, 2008—secs. 66(2), 68(2), Ch. 422, L. 1997.*)

History: En. Sec. 9, Ch. 10, Sp. L. June 1989; amd. Sec. 2, Ch. 773, L. 1991; amd. Sec. 1, Ch. 499, L. 1993; amd. Sec. 33, Ch. 27, Sp. L. November 1993; amd. Sec. 9, Ch. 570, L. 1995; amd. Sec. 1, Ch. 13, Sp. L. August 2002.

15-1-112. Business equipment tax rate reduction reimbursement to local government taxing jurisdictions. (1) On or before January 1, 1996, for the reduction in payment under subsection (4) and by June 1 of 1996, 1997, and 1998 for all other reimbursements in this section, the department shall determine a reimbursement amount associated with reducing the tax rate in 15-6-138 and provide that information to each county treasurer. The reimbursement amount must be determined for each local government taxing jurisdiction that levied mills on the taxable value of property described in 15-6-138 in the corresponding tax year. However, the reimbursement does not apply to property described in 15-6-138 that has a reduced tax rate under 15-24-1402.

(2) (a) The reimbursement amount to be used as the basis for the payment reduction under subsection (4) is the product of multiplying the tax year 1995 taxable value of property described in 15-6-138 for each local government taxing jurisdiction by the tax year 1995 mill levy for the jurisdiction and then multiplying by 1/9th.

(b) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1996 is the amount determined under subsection (2)(a) unless the tax year 1996 market value of property described in 15-6-138, for the particular local government taxing jurisdiction, is more than the tax year 1995 market value for property described in 15-6-138 in the same jurisdiction.

(ii) If the tax year 1996 market value is greater than the tax year 1995 market value for a particular jurisdiction, then the reimbursement amount for tax year 1996 is the result of subtracting the simulated 1996 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined by multiplying the actual taxable valuation of property described in

15-6-138, for tax year 1995, by the tax year 1995 mill levy for the jurisdiction. The simulated 1996 tax for the particular jurisdiction is the actual tax year 1996 taxable value of property described in 15-6-138 multiplied by the tax year 1995 mill levy for the particular jurisdiction. If the simulated 1996 tax is greater than the 1995 tax, the reimbursement amount is zero.

(c) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1997 is the amount determined under subsection (2)(a) multiplied by two unless the tax year 1997 market value of property described in 15-6-138, for the particular local government taxing jurisdiction, is more than the tax year 1995 market value for property described in 15-6-138 in the same jurisdiction.

(ii) If the tax year 1997 market value is greater than the tax year 1995 market value for a particular jurisdiction, then the reimbursement amount for tax year 1997 is the result of subtracting the simulated 1997 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined by multiplying the actual taxable valuation of property described in 15-6-138, for tax year 1995, by the tax year 1995 mill levy for the jurisdiction. The simulated 1997 tax for the particular jurisdiction is the actual tax year 1997 taxable value of property described in 15-6-138 multiplied by the tax year 1995 mill levy for the particular jurisdiction. If the simulated 1997 tax is greater than the 1995 tax, the reimbursement amount is zero.

(d) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1998 is the amount determined under subsection (2)(a) multiplied by three unless the tax year 1998 market value of property described in 15-6-138, for the particular local government taxing jurisdiction, is more than the tax year 1995 market value for property described in 15-6-138 in the same jurisdiction.

(ii) If the tax year 1998 market value is greater than the tax year 1995 market value for a particular jurisdiction, then the reimbursement amount for tax year 1998 is the result of subtracting the simulated 1998 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined by multiplying the actual taxable valuation of property described in 15-6-138, for tax year 1995, by the tax year 1995 mill levy for the jurisdiction. The simulated 1998 tax for the particular jurisdiction is the actual tax year 1998 taxable value of property described in 15-6-138 multiplied by the tax year 1995 mill levy for the particular jurisdiction. If the simulated 1998 tax is greater than the 1995 tax, the reimbursement amount is zero.

(3) (a) For purposes of this section, "local government taxing jurisdiction" means a local government rather than a state taxing jurisdiction that levied mills against property described in 15-6-138, including county governments, incorporated city and town governments, consolidated county and city governments, tax increment financing districts, local elementary and high school districts, local community college districts, miscellaneous districts, and special districts. The term includes countywide mills levied for equalization of school retirement or transportation.

(b) The term does not include county or state school equalization levies provided for in 20-9-331, 20-9-333, 20-9-360, and 20-25-439.

(c) Each tax increment financing district must receive the benefit of the state mill on the incremental taxable value of the district.

(4) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1996 by an amount equal to 38% of the reimbursement amount determined under subsection (2)(a) for all of the local government taxing jurisdictions in the county.

(5) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of 1996 by an amount equal to 31% of the reimbursement amount for tax year 1996 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(6) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1997 by an amount equal to 31% of the reimbursement amount for tax year 1996 for all of the local government taxing jurisdictions in the county and by an amount equal to 38% of the reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(7) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of 1997 by an amount equal to 31% of the reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(8) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1998 by an amount equal to 31% of the reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county and by an amount equal to 38% of the reimbursement amount for tax year 1998 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(9) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of 1998 by an amount equal to 31% of the reimbursement amount for tax year 1998 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(10) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1999 by an amount equal to 69% of the reimbursement amount for tax year 1998 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(11) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of the years 1999 through 2007 by an amount equal to 31% of the reimbursement amount determined in subsection (13) for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(12) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of the years 2000 through 2008 by an amount equal to 69% of the reimbursement amount determined in subsection (13) for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(13) (a) The reimbursement amount for tax year 1999 and each subsequent tax year for 9 years must be progressively reduced each year by 10% of the reimbursement amount for tax year 1998, according to the following schedule:

Tax Year	Percentage of 1998 Reimbursement Amount
1999	90
2000	80
2001	70
2002	60
2003	50
2004	40
2005	30
2006	20
2007	10
2008 and following years	0

(b) The reimbursement amount for each tax year must be the basis for reducing the amount remitted to the state for the levy imposed under 20-9-360 in December of the same year and June of the following year.

(14) The county treasurer shall use the funds from the reduced payment to the state for the levy imposed under 20-9-360 to reimburse each local government taxing jurisdiction in the amount determined by the department under subsection (2). The reimbursement must be distributed to funds within local government taxing jurisdictions in the same manner as taxes on property described in 15-6-138 are distributed. The reimbursement in June must be distributed based on the prior year's mill levy, and the reimbursement in December must be based on the current year's mill levy.

(15) Each local government taxing jurisdiction receiving reimbursements shall consider the amount of reimbursement that will be received and lower the mill levy otherwise necessary to fund the budget by the amount that would otherwise have to be raised by the mill levy.

(16) A local government taxing jurisdiction that ceases to exist after October 1, 1995, will no longer be considered for revenue loss or reimbursement purposes. A local government taxing jurisdiction that is created after January 1, 1996, will not be considered for revenue loss or reimbursement purposes. If a local government taxing jurisdiction that existed prior to January of 1996 is split between two or more taxing jurisdictions or is annexed to or is consolidated with another taxing jurisdiction, the department shall determine how much of the revenue loss and reimbursement is attributed to the new jurisdictions.

History: En. Sec. 2, Ch. 570, L. 1995; amd. Sec. 25, Ch. 51, L. 1999; amd. Sec. 1, Ch. 245, L. 1999; amd. Sec. 6, Ch. 571, L. 2001; amd. Sec. 2, Ch. 13, Sp. L. August 2002.

Part 4

Protest Payments, Actions to Recover, and Alternative Remedies

15-1-402. Payment of property taxes or fees under protest. (1) (a) The person upon whom a property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested.

(b) The protested payment must:

- (i) be made to the officer designated and authorized to collect it;
- (ii) specify the grounds of protest; and
- (iii) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

(c) If the protested property tax or fee is on property that is subject to central assessment pursuant to 15-23-101, the person shall report to the department the grounds of the protest and the amount of the protested payment for each county in which a protested payment was made. By November 1 of each year, the department shall mail a notice stating the requirements of this subsection (1)(c) to owners of property subject to central assessment under 15-23-101(1) and (2) who have filed a timely appeal under 15-1-211.

(2) A person appealing a property tax or fee pursuant to chapter 2 or 15, including a person appealing a property tax or fee on property that is subject to central assessment pursuant to 15-23-101(1) or (2), shall pay the tax or fee under protest when due in order to receive a refund. If the tax or fee is not paid under protest when due, the appeal may continue but a tax or fee may not be refunded as a result of the appeal.

(3) If a protested property tax or fee is payable in installments, a subsequent installment portion considered unlawful by the state tax appeal board need not be paid and an action or suit need not be commenced to recover the subsequent installment. The determination of the action or suit commenced to recover the first installment portion paid under protest determines the right of the party paying the subsequent installment to have it or any part of it refunded to the party or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

(4) (a) Except as provided in subsection (4)(b), all property taxes and fees paid under protest to a county or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and must be retained in the protest fund until the final determination of any action or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money of this fund in the state unified investment program or in any manner provided in Title 7, chapter 6. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(b) (i) Property taxes that are levied by the state against property that is centrally assessed pursuant to 15-23-101 must be remitted by the county treasurer to the department.

(ii) The department shall deposit 50% of that portion of the funds levied for the university system pursuant to 15-10-107 in the state special revenue fund to the credit of the university

system, and the other 50% of the funds levied pursuant to 15-10-107 must be deposited in a centrally assessed property tax state special revenue fund.

(iii) Fifty percent of the funds remaining after the deposit of university system funds must be deposited in the state general fund, and the other 50% must be deposited in a centrally assessed property tax state special revenue fund.

(5) (a) Except as provided in subsection (5)(b), the governing body of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the first-year protest amount.

(b) The governing body of a taxing jurisdiction affected by the payment of taxes under protest on property that is centrally assessed pursuant to 15-23-101 in the first and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled. The decision in a previous year of a taxing jurisdiction to leave protested taxes of centrally assessed property in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled.

(6) (a) If action before the county tax appeal board, state tax appeal board, or district court is not commenced within the time specified or if the action is commenced and finally determined in favor of the department of revenue, county, municipality, or treasurer of the county or the municipality, the amount of the protested portions of the property tax or fee must be taken from the protest fund or the centrally assessed property tax state special revenue fund and deposited to the credit of the fund or funds to which the property tax belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses charged to the local government units.

(b) (i) If the action is finally determined adversely to the governmental entity levying the tax, then the treasurer of the municipality, county, or state entity levying the tax shall, upon receipt of a certified copy of the final judgment in the action and upon expiration of the time set forth for appeal of the final judgment, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee that the person holding the judgment is entitled to recover, together with interest from the date of payment under protest.

(ii) The taxing jurisdiction shall pay interest at the rate of interest earned by the pooled investment fund provided for in 17-6-203 for the applicable period.

(c) If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment, then to interest owed, and lastly to costs.

(d) (i) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction is proratably responsible. The treasurer is not responsible for the amount required to be refunded by the state treasurer as provided in subsection (6)(b).

(ii) For an adverse protest action against the state for centrally assessed property, the department shall refund from the centrally assessed property tax state special revenue fund the amount of protested taxes and from the state general fund the amount of interest as required in subsection (6)(b). The amount refunded for an adverse protested action from the centrally assessed property tax state special revenue fund may not exceed the amount of protested taxes or fees required to be deposited for that action pursuant to subsections (4)(b)(ii) and (4)(b)(iii) or, for taxes or fees protested prior to April 28, 2005, an equivalent amount of the money transferred to the fund pursuant to section 3, Chapter 536, Laws of 2005. If the amount available for the

adverse protested action in the centrally assessed property tax state special revenue fund is insufficient to refund the tax payments to which the taxpayer is entitled and for which the state is responsible, the department shall pay the remainder of the refund proportionally from the state general fund and from money deposited in the state special revenue fund levied pursuant to 15-10-107.

(e) In satisfying the requirements of subsection (6)(d), the taxing jurisdiction, including the state, is allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the rate referred to in subsection (6)(b) from the date of payment under protest until the date of final resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus 4 percentage points, from the date of final resolution of the protest until refund is made.

(7) A taxing jurisdiction, except the state, may satisfy the requirements of this section by use of funds from one or more of the following sources:

- (a) imposition of a property tax to be collected by a special tax protest refund levy;
- (b) the general fund or any other funds legally available to the governing body; and
- (c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is authorized to issue the bonds pursuant to procedures established by law. The bonds may be issued without being submitted to an election. Property taxes may be levied to amortize the bonds.

(8) If the department revises an assessment that results in a refund of taxes of \$5 or less, a refund is not owed.

History: En. 4024, Pol. C. 1895; amd. Sec. 1, Ch. 108, L. 1905; re-en. Sec. 2742, Rev. C. 1907; amd. Sec. 1, Ch. 135, L. 1909; re-en. Sec. 2269, R.C.M. 1921; amd. Sec. 1, Ch. 142, L. 1925; re-en. Sec. 2269, R.C.M. 1935; amd. Sec. 1, Ch. 204, L. 1955; amd. Sec. 151, Ch. 516, L. 1973; amd. Sec. 1, Ch. 348, L. 1977; amd. Sec. 1, Ch. 394, L. 1977; R.C.M. 1947, 84-4502; amd. Sec. 1, Ch. 281, L. 1979; amd. Sec. 1, Ch. 680, L. 1979; amd. Sec. 6, Ch. 463, L. 1981; amd. Sec. 4, Ch. 501, L. 1981; amd. Sec. 1, Ch. 26, Sp. L. June 1986; amd. Sec. 1, Ch. 213, L. 1989; amd. Sec. 1, Ch. 594, L. 1993; amd. Sec. 1, Ch. 448, L. 1999; amd. Sec. 80, Ch. 584, L. 1999; amd. Sec. 92, Ch. 574, L. 2001; amd. Sec. 1, Ch. 511, L. 2003; amd. Sec. 1, Ch. 536, L. 2005.

Part 5 Disposition of Tax Proceeds

15-1-504. Settlement of county treasurer with department. (1) Except as provided in subsections (2) and (3), the county treasurer, between the 1st and 20th days of each month, shall remit to the department all money belonging to the state that was collected by the county treasurer during the preceding month. The remittance must be accompanied by a detailed report upon a form that the department prescribes. The department may assess counties an interest charge of 10% a year on all money not remitted within 5 days from the time required by this section.

(2) By June 20 of each year, the county treasurer shall remit to the department an estimate of all money belonging to the state that was collected by the county treasurer by June 15, in addition to the amount collected during the preceding month. By July 15, the county treasurer shall remit all money belonging to the state that was collected by the county treasurer during the remainder of June.

(3) Beginning July 1, 2006, the county treasurer shall remit to the department of justice by the 20th of each month all state money that was collected by the county treasurer due to motor vehicle, vessel, and snowmobile transactions during the preceding month. The remittance must be accompanied by a detailed report upon a form prescribed by the department of justice. The department may assess counties an interest charge, at the rate of 10% a year, on all money that is not remitted by the prescribed time.

History: En. Sec. 3990, Pol. C. 1895; re-en. Sec. 2715, Rev. C. 1907; re-en. Sec. 2255, R.C.M. 1921; Cal. Pol. C. Sec. 3865; amd. Sec. 1, Ch. 47, L. 1925; re-en. Sec. 2255, R.C.M. 1935; R.C.M. 1947, 84-4401; amd. Sec. 1, Ch. 72, L. 1991; amd. Sec. 1, Ch. 4, Sp. L. July 1992; amd. Sec. 1, Ch. 102, L. 1993; amd. Sec. 6, Ch. 257, L. 2001; amd. Sec. 5, Ch. 542, L. 2005.

CHAPTER 7 APPRAISAL

Part 1 General Methods

15-7-111. Periodic revaluation of certain taxable property. (1) The department shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten. All other property must be revalued annually.

(2) The department shall value and phase in the value of newly constructed, remodeled, or reclassified property in a manner consistent with the valuation within the same class and the values established pursuant to subsection (1). The department shall adopt rules for determining the assessed valuation and phased-in value of new, remodeled, or reclassified property within the same class.

(3) The department of revenue shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten. A comprehensive written reappraisal plan must be promulgated by the department. The reappraisal plan adopted must provide that all class three, four, and ten property in each county is revalued by January 1, 2009, effective for January 1, 2009, and each succeeding 6 years. The resulting valuation changes must be phased in for each year until the next reappraisal. If a percentage of change for each year is not established, then the percentage of phasein for each year is 16.66%.

History: En. 84-429.14 by Sec. 1, Ch. 294, L. 1975; R.C.M. 1947, 84-429.14; amd. Sec. 1, Ch. 596, L. 1987; amd. Sec. 4, Ch. 613, L. 1987; amd. Sec. 2, Ch. 636, L. 1989; amd. Secs. 2, 8, Ch. 680, L. 1991; amd. Sec. 4, Ch. 13, Sp. L. July 1992; amd. Sec. 4, Ch. 463, L. 1997; amd. Sec. 87, Ch. 584, L. 1999; amd. Sec. 4, Ch. 11, Sp. L. May 2000; amd. Sec. 5, Ch. 606, L. 2003; amd. Sec. 1, Ch. 554, L. 2005.

15-7-112. Equalization of valuations. The same method of appraisal and assessment shall be used in each county of the state to the end that comparable property with similar true market values and subject to taxation in Montana shall have substantially equal taxable values at the end of each cyclical revaluation program hereinbefore provided.

History: En. 84-429.15 by Sec. 2, Ch. 294, L. 1975; R.C.M. 1947, 84-429.15.

15-7-113. Program exclusive. No program for the revaluation of property shall be implemented for taxation in any county other than as prescribed in 15-7-111 through 15-7-114.

History: En. 84-429.16 by Sec. 3, Ch. 294, L. 1975; R.C.M. 1947, 84-429.16.

15-7-114. Law supplemental. Sections 15-7-111 through 15-7-114 are intended to be supplementary to and are not intended to repeal 15-7-103.

History: En. 84-429.17 by Sec. 4, Ch. 294, L. 1975; R.C.M. 1947, 84-429.17.

CHAPTER 10 PROPERTY TAX LEVIES

Part 2 Statement of Levies

15-10-201. Tax levies to be made in mills and tenths and hundredths of mills. Every board of county commissioners, city or town council or commission, and every other board or commission authorized by law to make or fix tax levies for any purpose shall make and fix every such levy in mills and tenths and hundredths of mills.

History: En. Sec. 1, Ch. 123, L. 1935; re-en. Sec. 2148.1, R.C.M. 1935; R.C.M. 1947, 84-3802.

15-10-202. Certification of taxable values. (1) Subject to subsection (2), by the first Monday in August, the department shall certify to each taxing authority the total taxable value within the jurisdiction of the taxing authority. The department shall also send to each taxing authority a written statement of its best estimate of the total taxable value of newly taxable property, as described in 15-10-420(3). Upon the request of a taxing authority, the department shall provide an estimate of the total taxable value within the jurisdiction of the taxing authority by the second Monday in July.

(2) For tax years beginning after December 31, 2000, if the ownership of centrally assessed property has been transferred in whole or in part to a different owner and the transferred property has a market value of \$1 million or more as determined by the department, the department shall determine separately the taxable value of newly taxable property and the taxable value associated with reappraisal of centrally assessed property that is transferred to a different owner. The department shall certify to each taxing authority, at the time specified in subsection (1), the taxable value of newly taxable property and the total taxable value of centrally assessed property, exclusive of newly taxable property, that has been transferred to a different owner.

History: En. 84-7202 by Sec. 2, Ch. 286, L. 1974; R.C.M. 1947, 84-7202; amd. Sec. 4, Ch. 726, L. 1985; amd. Sec. 5, Ch. 26, Sp. L. June 1986; amd. Sec. 2, Ch. 9, L. 1989; amd. Sec. 71, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 26, L. 2001; amd. Sec. 2, Ch. 419, L. 2001; amd. Sec. 4, Ch. 34, L. 2003.

15-10-203. Increase of tax revenue — advertisement of intention and public hearing required. (1) A local taxing authority may not budget an increased amount of ad valorem tax revenue in excess of the property tax revenue of the previous fiscal year exclusive of revenue from ad valorem taxation on properties appearing for the first time on the property tax record unless it adopts a resolution to budget additional property tax revenue. Prior to adoption of the resolution, the taxing authority shall hold a public hearing for the purpose of receiving comments on its intention to budget increased property tax revenue. The taxing authority shall advertise notice of the public hearing as specified in subsection (2). The public hearing may be held in conjunction with the tentative budget hearing or any other budget hearing that may be required by law.

(2) The taxing authority shall advertise its intent to budget an increase in property tax revenue in a newspaper meeting the requirements of 7-1-4127, except that the newspaper may not be primarily in the business of publishing legal advertisements. If there is not a newspaper in the county, in addition to being posted as required in 7-1-4127, the advertisement must be published in one or more newspapers of general circulation widely subscribed to by the residents of the county. The advertisement may not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement must meet the notice requirements of 7-1-4127. The advertisement must be published with at least the following information:

“NOTICE OF BUDGET INCREASE FROM PROPERTY TAXES

The (name of the taxing authority) intends to budget an increase in revenue from property taxation by (percentage of increase in property tax revenue from previous fiscal year) percent.

All concerned persons are invited to attend a public hearing on budgeting the increased property tax revenue to be held on (date and time) at (meeting place).

A decision on budgeting the increased property tax revenue will be made after considering comments made at this hearing.

For further information please contact: (name, address, and phone number of person who can be contacted for further information).”

History: En. 84-7203 by Sec. 3, Ch. 286, L. 1974; R.C.M. 1947, 84-7203; amd. Sec. 6, Ch. 581, L. 1979; amd. Sec. 39, Ch. 370, L. 1987; amd. Sec. 1, Ch. 817, L. 1991; amd. Sec. 72, Ch. 27, Sp. L. November 1993; amd. Sec. 67, Ch. 430, L. 1995; amd. Sec. 68, Ch. 354, L. 2001.

15-10-206. Notification of decisions of tax appeal boards. The department shall notify each taxing authority of any change in the property tax record that results from actions by the state or county tax appeal boards.

History: En. 84-7206 by Sec. 6, Ch. 286, L. 1974; R.C.M. 1947, 84-7206; amd. Sec. 3, Ch. 9, L. 1989; amd. Sec. 74, Ch. 27, Sp. L. November 1993; amd. Sec. 3, Ch. 26, L. 2001; amd. Sec. 3, Ch. 419, L. 2001.

Part 3 Entry of Taxes

15-10-321. Limitation on levy and computation of tax — new taxing jurisdictions. The department of revenue may not be required to levy or compute a tax for any new taxing jurisdiction created or for any change in an existing jurisdiction unless formally notified of its creation or change by January 1 of the year in which the taxes are to be levied.

History: En. 84-3811 by Sec. 1, Ch. 349, L. 1977; R.C.M. 1947, 84-3811; amd. Sec. 1, Ch. 76, L. 1981.

Part 4 **Limitation on Property Taxes**

15-10-401. Declaration of policy. (1) The state of Montana's reliance on the taxation of property to support education and local government has placed an unreasonable burden on the owners of all classes of property described in Title 15, chapter 6, part 1.

(2) Except as provided in 15-10-420, the people of the state of Montana declare that it is the policy of the state of Montana that no further property tax increases be imposed on property. In order to reduce volatility in property taxation and in order to reduce taxpayer uncertainty, it is the policy of the legislature to develop alternatives to market value for purposes of taxation.

History: En. Sec. 1, I.M. No. 105, approved Nov. 4, 1986; amd. Sec. 5, Ch. 463, L. 1997; amd. Sec. 92, Ch. 584, L. 1999.

15-10-402. Property tax limited to 1996 levels. Except as provided in 15-10-420, the amount of taxes levied on property described in Title 15, chapter 6, part 1, may not, for any taxing jurisdiction, exceed the amount levied for tax year 1996.

History: En. Sec. 2, I.M. No. 105, approved Nov. 4, 1986; amd. Sec. 6, Ch. 10, Sp. L. June 1989; amd. Sec. 2, Ch. 11, Sp. L. June 1989; amd. Sec. 3, Ch. 745, L. 1991; amd. Sec. 11, Ch. 773, L. 1991; amd. Sec. 7, Ch. 267, L. 1993; amd. Sec. 6, Ch. 463, L. 1997; amd. Sec. 93, Ch. 584, L. 1999.

15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) (a) For purposes of this section, newly taxable property includes:

- (i) annexation of real property and improvements into a taxing unit;
- (ii) construction, expansion, or remodeling of improvements;
- (iii) transfer of property into a taxing unit;
- (iv) subdivision of real property; and
- (v) transfer of property from tax-exempt to taxable status.

(b) Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

- (i) a change in the boundary of a tax increment financing district;
- (ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or
- (iii) the termination of a tax increment financing district.

(b) If a tax increment financing district terminates prior to the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the year in which the tax increment financing district terminates. If a tax increment financing

district terminates after the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

(c) For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property or as nonqualified agricultural land as described in 15-6-133(1)(c).

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

(a) school district levies established in Title 20; or

(b) the portion of a governmental entity's property tax levy for premium contributions for group benefits excluded under 2-9-212 or 2-18-703.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity may increase the number of mills to account for a decrease in reimbursements.

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in whole mills. If the mill levy calculation does not result in a whole number of mills, then the calculation must be rounded up to the nearest whole mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402;

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326; or

(iv) a levy for the support of a study commission under 7-3-184.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

(11) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit.

History: En. Sec. 1, Ch. 584, L. 1999; amd. Secs. 6, 16(1), Ch. 11, Sp. L. May 2000; amd. Sec. 1, Ch. 191, L. 2001; amd. Sec. 1, Ch. 220, L. 2001; amd. Sec. 3, Ch. 361, L. 2001; amd. Sec. 3, Ch. 511, L. 2001; amd. Sec. 7, Ch. 571, L. 2001; amd. Sec. 94, Ch. 574, L. 2001; amd. Sec. 1, Ch. 115, L. 2003; amd. Sec. 1, Ch. 476, L. 2003; amd. Sec. 3, Ch. 376, L. 2005; amd. Sec. 3, Ch. 545, L. 2005; amd. Sec. 20, Ch. 521, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 521 inserted (9)(a)(iv) concerning levy to support study commission; and made minor changes in style. Amendment effective October 1, 2007.

15-10-425. Mill levy election. (1) A county, consolidated government, incorporated city, incorporated town, school district, or other taxing entity may impose a new mill levy, increase a mill levy that is required to be submitted to the electors, or exceed the mill levy limit provided for in 15-10-420 by conducting an election as provided in this section.

(2) An election conducted pursuant to this section may be held in conjunction with a regular or primary election or may be a special election. The governing body shall pass a resolution, shall amend its self-governing charter, or must receive a petition indicating an intent to impose a new levy, increase a mill levy, or exceed the current statutory mill levy provided for in 15-10-420 on the approval of a majority of the qualified electors voting in the election. The resolution, charter amendment, or petition must include:

(a) the specific purpose for which the additional money will be used;

(b) either:

(i) the specific amount of money to be raised and the approximate number of mills to be imposed; or

(ii) the specific number of mills to be imposed and the approximate amount of money to be raised; and

(c) whether the levy is permanent or the durational limit on the levy.

(3) Notice of the election must be prepared by the governing body and given as provided by law. The form of the ballot must reflect the content of the resolution or charter amendment and must include a statement of the impact of the election on a home valued at \$100,000 and a home valued at \$200,000 in the district in terms of actual dollars in additional property taxes that would be imposed on residences with those values if the mill levy were to pass. The ballot may also include a statement of the impact of the election on homes of any other value in the district, if appropriate.

(4) If the majority voting on the question are in favor of the additional levy, the governing body is authorized to impose the levy in either the amount or the number of mills specified in the resolution or charter amendment.

(5) A governing body, as defined in 7-6-4002, may reduce an approved levy in any fiscal year without losing the authority to impose in a subsequent fiscal year up to the maximum amount or number of mills approved in the election. However, nothing in this subsection authorizes a governing body to impose more than the approved levy in any fiscal year or to extend the duration of the approved levy.

History: En. Sec. 1, Ch. 495, L. 2001; en. Sec. 2, Ch. 574, L. 2001; amd. Sec. 1, Ch. 170, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 170 in (2)(b) inserted "either"; in (2)(b)(i) after "raised" inserted "and the approximate number of mills to be imposed"; in (2)(b)(ii) at beginning after "the" substituted "specific" for "approximate" and after "mills" substituted "to be imposed and the approximate amount of money to be raised" for "required"; in (2)(c) at beginning inserted "whether the levy is permanent" and after "limit" deleted "if any"; in (4) near middle after "levy in" inserted "either" and after "amount" inserted "or the number of mills"; inserted (5) allowing a local government to reduce the levy without losing the authority to impose up to the maximum approved; and made minor changes in style. Amendment effective October 1, 2007.

CHAPTER 16 COLLECTION OF PROPERTY TAXES

Part 2 Special Payment Provisions

15-16-201. Tax prepayment — new industrial facilities. (1) A person intending to construct or locate a major new industrial facility, as defined in subsection (2) of this section, shall upon request of the board of county commissioners of the county in which the facility is to be located, prepay, when permission is granted to construct or locate by the appropriate governmental agency, an amount equal to three times the estimated property tax due the year the facility is completed. The person who is to prepay under this section shall not be obligated to prepay the entire amount at one time but, upon request of the board of county commissioners of the county, shall prepay only that amount shown to be needed from time to time. To assure this payment or payments, the person who is to prepay shall guarantee to the board of county commissioners and also have a bank or banks guarantee that these amounts will be paid as needed for expenditures created by the impact. When the facility is completed and assessed by the department of revenue, it shall be subject during the first 3 years and thereafter to taxation as all other property similarly situated, except that one-fifth of the amount prepaid shall be allowed as a credit against property taxes in each of the first 5 years after the start of productive operation of the facility.

(2) A major new industrial facility is a manufacturing or mining facility other than a large-scale mineral development as defined in 90-6-302 which will employ on an average annual basis at least 100 people in construction or operation of the facility and which will create a substantial adverse impact on existing state, county, or municipal services.

History: En. 84-41-105 by Sec. 1, Ch. 449, L. 1975; R.C.M. 1947, 84-41-105; amd. Sec. 12, Ch. 617, L. 1981; amd. Sec. 3, Ch. 227, L. 1991.

Part 6 Refunds

15-16-602. Concurrent remedies. Sections 15-16-603 through 15-16-605 may not be considered or construed to be in conflict with the provisions of chapter 1, part 4. Sections 15-16-603 through 15-16-605 and the provisions of part 4 provide and afford concurrent remedies.

History: En. Sec. 2, Ch. 201, L. 1939; R.C.M. 1947, 84-4177; amd. Sec. 4, Ch. 539, L. 1993.

15-16-603. Refund of taxes — limitations on refunds. (1) Subject to the provisions in subsections (2) and (3), a board of county commissioners shall order a refund:

(a) on a tax, penalty, interest, or cost paid more than once or erroneously or illegally collected if an appeal pursuant to 15-1-402 was not available;

(b) on a tax paid for which a refund is allowed under 15-16-612 or 15-16-613;

(c) on a tax, penalty, or interest collected as a result of an error in the description or location of real property or improvements or for duplicate taxes paid as determined by the department of revenue;

(d) on net or gross proceeds tax, centrally assessed property tax, or local government severance tax, penalty, or interest when the department of revenue notifies the board of county commissioners of an assessment revision completed pursuant to 15-8-601;

(e) upon entry of a decision either by the district court or by the state tax appeal board under 15-2-306 that has not been appealed to a higher court; or

(f) on a decision that a refund is payable as a result of a taxpayer prevailing in a motor vehicle tax or fee proceeding under 15-15-201.

(2) The taxpayer shall prove that a refund is due under subsection (1)(a) or (1)(b).

(3) (a) A refund may not be granted under subsection (1)(a) or (1)(b) unless the taxpayer or a representative of the taxpayer files a written claim with the board of county commissioners within 10 years after the date when the second half of the taxes would have become delinquent if the taxes had not been paid.

(b) The refund required under subsection (1)(c) must be made for 5 tax years or for the duration of the error, whichever period is shorter.

(c) A refund may not be made under subsection (1)(c) unless the taxpayer allowed the department of revenue access to the taxpayer's property for the purposes of appraising the property.

History: En. Sec. 1, Ch. 539, L. 1993; amd. Sec. 1, Ch. 440, L. 1995; amd. Sec. 5, Ch. 85, L. 1999.

15-16-604. Judicial review of tax refund denials. (1) A taxpayer aggrieved by a final decision of the board of county commissioners under 15-16-603 is entitled to a judicial review of the decision under this section.

(2) Proceedings for review of a decision of the board of county commissioners must be instituted by filing a petition for judicial review in the district court of the county within 30 days of receipt of the board's decision. A copy of the petition must be served on the board of county commissioners within 10 days of the filing of the petition.

(3) Review of a decision of the board of county commissioners must be conducted by the district court under the standards of review set out in 2-4-704. Additional evidence may be received by the district court under the standards set out in 2-4-703.

History: En. Sec. 2, Ch. 539, L. 1993.

CHAPTER 23 CENTRALLY ASSESSED PROPERTY

Part 1 General Provisions

15-23-101. Properties centrally assessed. The department shall centrally assess each year:

(1) the railroad transportation property of railroads and railroad car companies operating in more than one county in the state or more than one state;

(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state, including but not limited to telegraph, telephone, microwave, and electric power or transmission lines; natural gas or oil pipelines; canals, ditches, flumes, or like properties and including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, property constructed, owned, or operated by a public agency created by congress to transmit or distribute electrical energy produced at privately owned generating facilities, not including rural electric cooperatives;

(3) all property of scheduled airlines;

(4) the net proceeds of mines, except bentonite mines;

(5) the gross proceeds of coal mines; and

(6) property described in subsections (1) and (2) that is subject to the provisions of Title 15, chapter 24, part 12.

History: En. 84-7801 by Sec. 1, Ch. 98, L. 1977; R.C.M. 1947, 84-7801; amd. Sec. 4, Ch. 686, L. 1979; amd. Sec. 3, Ch. 478, L. 1981; amd. Sec. 4, Ch. 683, L. 1983; amd. Sec. 2, Ch. 10, Sp. L. July 1992; amd. Sec. 61, Ch. 42, L. 1997; amd. Sec. 2, Ch. 531, L. 1999; amd. Sec. 8, Ch. 583, L. 1999; amd. Sec. 18, Ch. 7, L. 2001; amd. Sec. 14, Ch. 559, L. 2005.

15-23-105. Apportionment among counties. The department shall apportion the value of property assessed under 15-23-101, 15-23-205, or 15-23-403, other than railroad car company property, among the counties in which such property is located. Apportionment shall be on a mileage basis or on the basis of the original installed cost of the centrally assessed property located in the respective counties. If the property is of such a character that its value cannot reasonably be apportioned on the basis of mileage or on the basis of the original installed cost of the centrally assessed property located in the respective counties, the department may adopt such other method or basis of apportionment as may be just or proper.

History: En. 84-7805 by Sec. 5, Ch. 98, L. 1977; R.C.M. 1947, 84-7805; amd. Sec. 5, Ch. 686, L. 1979; amd. Sec. 5, Ch. 10, Sp. L. July 1992.

15-23-106. Report to the counties. (1) On or before July 1, the department shall prepare for each county a statement listing:

(a) the assessed value of railroad property, as determined under 15-23-205, apportioned to the county, including the length or other description of the property;

(b) the assessed value of utility property, as determined under 15-23-303, apportioned to the county, including the length or other description of the property;

(c) the assessed value of property of airline companies, as determined under 15-23-403, apportioned to the county; 90% of the value of the property of airline companies apportioned to any county by reason of a state airport being located in the county must be stated separately from the remaining assessed value of the property of airline companies apportioned to the county;

(d) the assessed value of the net proceeds and royalties from mines in the county, as determined under 15-23-503, 15-23-505, and 15-23-515 through 15-23-518; and

(e) the assessed value of the gross proceeds from coal mines, as described in 15-23-701.

(2) The department shall enter the reported assessed values in the property tax record for the county.

History: En. 84-7806 by Sec. 6, Ch. 98, L. 1977; R.C.M. 1947, 84-7806; amd. Sec. 1, Ch. 238, L. 1981; amd. Sec. 6, Ch. 20, L. 1985; amd. Sec. 6, Ch. 531, L. 1989; amd. Sec. 6, Ch. 695, L. 1991; amd. Sec. 6, Ch. 506, L. 1993; amd. Sec. 95, Ch. 27, Sp. L. November 1993; amd. Sec. 6, Ch. 397, L. 1995; amd. Sec. 32, Ch. 451, L. 1995.

Part 7 Coal Gross Proceeds

15-23-703. Taxation of gross proceeds — taxable value for county classification and guaranteed tax base aid to schools. (1) The department shall compute from the reported gross proceeds from coal a tax roll that must be transmitted to the county treasurer on or before September 15 each year. The department may not levy or assess any mills against the reported gross proceeds of coal but shall levy a tax of 5% against the value of the reported gross proceeds

as provided in 15-23-701(1)(d). The county treasurer shall give full notice to each coal producer of the taxes due and shall collect the taxes.

(2) For county classification and all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102.

(3) Except as provided in subsection (6), the county treasurer shall calculate and distribute to the state, county, and eligible school districts in the county the amount of the coal gross proceeds tax, determined by multiplying the unit value calculated in 15-23-705 times the tons of coal extracted, treated, and sold on which the coal gross proceeds tax was owed during the preceding calendar year.

(4) Except as provided in subsections (5), (6), and (8), the county treasurer shall credit the amount determined under subsection (3) and the amounts received under 15-23-706:

(a) to the state and to the counties that levied mills in fiscal year 1990 against 1988 production in the relative proportions required by the levies for state and county purposes in the same manner as property taxes were distributed in fiscal year 1990 in the taxing jurisdiction; and

(b) to school districts in the county that either levied mills in school fiscal year 1990 against 1988 production or used nontax revenue, such as impact aid money, as provided in 20 U.S.C. 7701, et seq., in lieu of levying mills against production, in the same manner that property taxes collected or property taxes that would have been collected would have been distributed in the 1990 school fiscal year in the school district.

(5) (a) If the total tax liability in a taxing jurisdiction exceeds the amount determined in subsection (3), the county treasurer shall, immediately following the distribution from taxes paid on May 31 of each year, send the excess revenue, excluding any protested coal gross proceeds tax revenue, to the department for redistribution as provided in 15-23-706.

(b) If the total tax liability in a taxing jurisdiction is less than the amount determined in subsection (3), the taxing jurisdiction is entitled to a redistribution as provided by 15-23-706.

(6) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in subsection (4)(a), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(b) If the allocation in subsection (6)(a) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(7) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If the allocation under subsection (7)(a) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(8) The county treasurer shall credit all taxes collected under this part from coal mines that began production after December 31, 1988, in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the previous fiscal year.

History: En. 84-1322 by Sec. 11, Ch. 525, L. 1975; R.C.M. 1947, 84-1322; amd. Sec. 77, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 610, L. 1991; amd. Sec. 2, Ch. 641, L. 1991; amd. Sec. 3, Ch. 711, L. 1991; amd. Sec. 5, Ch. 790, L. 1991; amd. Sec. 101, Ch. 27, Sp. L. November 1993; amd. Sec. 3, Ch. 318, L. 1995; amd. Sec. 1, Ch. 22, L. 1997; amd. Sec. 62, Ch. 42, L. 1997; amd. Sec. 27, Ch. 29, L. 2001; amd. Sec. 22, Ch. 114, L. 2003.

15-23-705. Department to calculate unit value. (1) Except as provided in subsection (2), for the purposes of the distribution of coal gross proceeds taxes collected under this part, the department shall determine the unit value of coal for each mine in each taxing unit. The unit value for coal for each mine in each taxing unit is the quotient obtained by dividing the gross

proceeds taxes calculated on coal produced in that taxing unit in calendar year 1988 by the number of tons of coal extracted, treated, and sold in that taxing unit during 1988.

(2) The unit value calculation does not apply to coal mines that began production after December 31, 1988.

History: En. Sec. 1, Ch. 641, L. 1991.

15-23-706. Department to determine redistribution of coal gross proceeds to taxing jurisdictions. (1) The coal gross proceeds redistribution account established in 15-23-707 is statutorily appropriated, as provided in 17-7-502, for allocation to the county for redistribution as provided in subsections (2) and (3).

(2) Each year the department shall determine the amount of tax collected under this part from within each taxing unit in the county. If the amount collected by each county is less than the amount determined under 15-23-703(3) for that county, the department shall, on or before June 30 of each year, send the amount of the difference from the state special revenue account established in 15-23-707 to the county treasurer for redistribution as provided in 15-23-703(4).

(3) If the amount received by the department for redistribution is less than or more than the redistribution amount determined in subsection (2), the department shall calculate and redistribute the shortage or excess amount in the following manner:

(a) If a county does not receive the entire amount to which it is entitled under subsection (2), the shortage amounts of each taxing unit must be divided by the total shortage amounts of all taxing units determined under 15-23-703(3) to obtain a shortage percentage for each taxing unit. The shortage percentage for each taxing unit must be multiplied by the amount that is available for redistribution to each taxing unit, and this amount must be redistributed to each respective taxing unit.

(b) If there are excess amounts after the redistribution provided for in subsection (2), the excess amounts must be redistributed to the county of origin in proportion to the amount each taxing unit in the county contributed for redistribution.

(4) The county treasurer shall distribute the money received under subsection (3)(b) of this section as provided in 15-23-703(4).

History: En. Sec. 3, Ch. 641, L. 1991; amd. Sec. 63, Ch. 42, L. 1997.

15-23-707. Coal gross proceeds redistribution account. (1) There is within the state special revenue fund a coal gross proceeds redistribution account.

(2) All money received from county treasurers as provided in 15-23-703(5)(a) must be deposited by the department into the coal gross proceeds redistribution account for redistribution as provided in 15-23-706.

History: En. Sec. 4, Ch. 641, L. 1991; amd. Sec. 64, Ch. 42, L. 1997.

CHAPTER 24 SPECIAL PROPERTY TAX APPLICATIONS

Part 14 New Industry — Real Property Improvements

15-24-1401. Definitions. The following definitions apply to 15-24-1402 unless the context requires otherwise:

(1) “Expansion” means that the industry has added after July 1, 1987, at least \$50,000 worth of qualifying improvements or modernized processes to its property within the same jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year.

(2) “Industry” includes but is not limited to a firm that:

(a) engages in the mechanical or chemical transformation of materials or substances into products in the manner defined as manufacturing in the North American Industry Classification System Manual prepared by the United States office of management and budget;

(b) engages in the extraction or harvesting of minerals, ore, or forestry products;

(c) engages in the processing of Montana raw materials such as minerals, ore, agricultural products, and forestry products;

(d) engages in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of the industry's gross sales or receipts are earned from outside the state;

(e) earns 50% or more of its annual gross income from out-of-state sales; or

(f) engages in the production of electrical energy in an amount of 1 megawatt or more by means of an alternative renewable energy source as defined in 15-6-225.

(3) "New" means that the firm is new to the jurisdiction approving the resolution provided for in 15-24-1402(2) and has invested after July 1, 1987, at least \$125,000 worth of qualifying improvements or modernized processes in the jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year. New industry does not include property treated as new industrial property under 15-6-135.

(4) "Qualifying" means meeting all the terms, conditions, and requirements for a reduction in taxable value under 15-24-1402 and this section.

History: En. Sec. 2, Ch. 564, L. 1981; amd. Sec. 1, Ch. 574, L. 1987; amd. Sec. 2, Ch. 694, L. 1991; amd. Sec. 29, Ch. 51, L. 1999; amd. Sec. 7, Ch. 591, L. 2001; amd. Sec. 2, Ch. 405, L. 2003.

15-24-1402. New or expanding industry — assessment — notification. (1) In the first 5 years after a construction permit is issued, qualifying improvements or modernized processes that represent new industry or expansion of an existing industry, as designated in the approving resolution, must be taxed at 50% of their taxable value. Subject to 15-10-420, each year thereafter, the percentage must be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent years, the property must be taxed at 100% of its taxable value.

(2) (a) In order for a taxpayer to receive the tax benefits described in subsection (1), the governing body of the affected county or the incorporated city or town must have approved by separate resolution for each project, following due notice as defined in 76-15-103 and a public hearing, the use of the schedule provided for in subsection (1) for its respective jurisdiction. The governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.

(b) Subject to 15-10-420, the governing body may end the tax benefits by majority vote at any time, but the tax benefits may not be denied an industrial facility that previously qualified for the benefits.

(c) The resolution provided for in subsection (2)(a) must include a definition of the improvements or modernized processes that qualify for the tax treatment that is to be allowed in the taxing jurisdiction. The resolution may provide that real property other than land, personal property, improvements, or any combination thereof is eligible for the tax benefits described in subsection (1).

(d) Property taxes abated from the reduction in taxable value allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of 15-24-1401, this section, or the resolution required by subsections (2)(a) and (2)(c) of this section. The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer.

(3) The taxpayer shall apply to the department for the tax treatment allowed under subsection (1). The application by the taxpayer must first be approved by the governing body of the appropriate local taxing jurisdiction, and the governing body shall indicate in its approval that the property of the applicant qualifies for the tax treatment provided for in this section. Upon receipt of the form with the approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change pursuant to this section.

(4) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for local high school district and elementary school district purposes and to the number of mills levied and assessed by the governing body approving the benefit over which the governing body has sole discretion. The benefit described in subsection (1) may not apply to levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, or 20-9-360 or otherwise required under state law.

(5) Prior to approving the resolution under this section, the governing body shall notify by certified mail all taxing jurisdictions affected by the tax benefit.

History: En. Sec. 3, Ch. 564, L. 1981; amd. Sec. 2, Ch. 574, L. 1987; amd. Sec. 3, Ch. 694, L. 1991; amd. Sec. 48, Ch. 767, L. 1991; amd. Sec. 116, Ch. 27, Sp. L. November 1993; amd. Sec. 97, Ch. 584, L. 1999; amd. Sec. 1, Ch. 597, L. 2005.

Part 15

Remodeling of Buildings or Structures

15-24-1501. Remodeling, reconstruction, or expansion of buildings or structures — assessment provisions — levy limitations. (1) Subject to 15-10-420 and the authority contained in subsection (4) of this section, remodeling, reconstruction, or expansion of existing buildings or structures, which increases their taxable value by at least 2 ½% as determined by the department, may receive tax benefits during the construction period and for the following 5 years in accordance with subsections (2) through (4) and the following schedule. The percentages must be applied as provided in subsections (3) and (4) and are limited to the increase in taxable value caused by remodeling, reconstruction, or expansion:

Construction period	0%
First year following construction	20%
Second year following construction	40%
Third year following construction	60%
Fourth year following construction	80%
Fifth year following construction	100%
Following years	100%

(2) In order to confer the tax benefits described in subsection (1), the governing body of the affected county or, if the construction will occur within an incorporated city or town, the governing body of the incorporated city or town shall approve by resolution for each remodeling, reconstruction, or expansion project the use of the schedule provided for in subsection (1) or a schedule adopted pursuant to subsection (4).

(3) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for high school district and elementary school district purposes and to the number of mills levied and assessed by the local governing body approving the benefit. The benefit described in subsection (1) may not apply to statewide levies.

(4) A local government may, in the resolution required by subsection (2), modify the percentages contained in subsection (1) that apply to the first year following construction through the fourth year following construction. A local government may not modify the percentages contained in subsection (1) that apply to the fifth year following construction or years following the fifth year. A local government may not modify the time limits contained in subsection (1). The modifications to the percentages in subsection (1) adopted by a local government apply uniformly to each remodeling, reconstruction, or expansion project approved by the governing body.

(5) Property taxes abated from the reduction in property taxes allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of this section or the resolution required by subsection (2). The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion.

The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer.

History: En. Sec. 2, Ch. 599, L. 1981; amd. Sec. 1, Ch. 439, L. 1985; amd. Sec. 1, Ch. 695, L. 1989; amd. Sec. 117, Ch. 27, Sp. L. November 1993; amd. Sec. 98, Ch. 584, L. 1999; amd. Sec. 2, Ch. 597, L. 2005.

Part 18

Business Incubators

15-24-1802. Business incubator tax exemption — procedure. (1) A business incubator owned or leased and operated by a local economic development organization is eligible for an exemption from property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the county, consolidated government, incorporated city or town, or school district in which the property is located shall approve the tax exemption by resolution, after due notice, as defined in 76-15-103, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). If a tax exemption is approved, the governing body shall do so by a separate resolution for each business incubator in its respective jurisdiction. The governing body may not grant approval for the business incubator until all of the applicant's taxes have been paid in full or, if the property is leased to a business incubator, until all of the owner's property taxes on that property have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that the local economic development organization:

(a) is a private, nonprofit corporation as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(b) is engaged in economic development and business assistance work in the area; and

(c) owns or leases and operates or will operate the business incubator.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change for the tax exemption provided for in this section.

(4) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies and assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 or otherwise required under state law.

(5) Property taxes abated from the reduction in property taxes allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of 15-24-1801, this section, or the resolution required by subsection (2) of this section. The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer.

History: En. Sec. 2, Ch. 666, L. 1989; amd. Sec. 1, Ch. 669, L. 1991; amd. Sec. 118, Ch. 27, Sp. L. November 1993; amd. Sec. 4, Ch. 597, L. 2005.

Part 19

Industrial Parks

15-24-1902. Industrial park tax exemption — procedure — termination. (1) An industrial park owned and operated by a local economic development organization or a port authority is eligible for an exemption from property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the county, consolidated government, incorporated city or town, or school district in which the property is located shall approve the tax exemption by resolution, after due notice, as defined in

76-15-103, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). If a tax exemption is approved, the governing body shall do so by a separate resolution for each industrial park in its respective jurisdiction. The governing body may not grant approval for the industrial park until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that:

(a) the local economic development organization:

(i) is a private, nonprofit corporation as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(ii) is engaged in economic development and business assistance work in the area; and

(iii) owns and operates or will own and operate the industrial development park; or

(b) the port authority legally exists under the provisions of 7-14-1101 or 7-14-1102.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change for the tax exemption provided for in this section.

(4) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies or assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 or otherwise required under state law.

(5) If a local economic development organization sells, leases, or otherwise disposes of the exempt property to a purchaser or lessee that is not a local economic development organization or a unit of federal, state, or local government, the tax exemption provided in this section terminates. The termination of the exemption applies January 1 of the taxable year immediately following the sale, lease, or other disposition of the property. Upon termination of the exemption, the property must be assessed as provided in 15-16-203.

(6) Property taxes abated from the reduction in property taxes allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of 15-24-1901, this section, or the resolution required by subsection (2) of this section. The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer.

History: En. Sec. 2, Ch. 679, L. 1989; amd. Sec. 1, Ch. 702, L. 1991; amd. Sec. 119, Ch. 27, Sp. L. November 1993; amd. Sec. 5, Ch. 597, L. 2005.

Part 20

Local Economic Development Organizations

15-24-2002. Building and land tax exemption — procedure — termination. (1) A building and land owned by a local economic development organization that the local economic development organization intends to sell or lease to a profit-oriented, employment-stimulating business are eligible for an exemption from property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the affected county, consolidated government, incorporated city or town, or school district in which the building and land are located shall approve the tax exemption by resolution, after due notice, as defined in 76-15-103, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). The governing body shall approve a tax exemption by a separate resolution. The governing body may not grant approval for the building and land until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that the local economic development organization:

(a) is a private, nonprofit corporation, as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(b) is engaged in economic development and business assistance work in the area; and

(c) owns or will own the building and land.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change for the tax exemption provided for in this section.

(4) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies or assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 and other levies required under state law.

(5) When a local economic development organization sells, leases, or otherwise disposes of the exempt property to a purchaser or lessee that is not a local economic development organization or a unit of federal, state, or local government, the tax exemption provided in this section terminates. The termination of the exemption applies January 1 of the taxable year immediately following the sale, lease, or other disposition of the property. Upon termination of the exemption, the property must be assessed as provided in 15-16-203.

(6) Property taxes abated from the reduction in property taxes allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of this section or the resolution required by subsection (2). The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer.

History: En. Sec. 2, Ch. 693, L. 1991; amd. Sec. 4, Ch. 693, L. 1991; amd. Sec. 120, Ch. 27, Sp. L. November 1993; amd. Sec. 6, Ch. 597, L. 2005.

Part 24

Value-Added Manufacturing

15-24-2403. Expanding industry taxable value decrease — application — approval — reports. (1) After December 31, 1991, an existing industry with qualifying property that represents an expansion of the industry is entitled to receive a decrease in the tax rate for class eight property if the property results in the hiring of full-time qualifying employees for each year in which the taxable value decrease is in effect.

(2) A person, firm, or other group seeking to qualify its property for the taxable value decrease under subsection (1) shall apply to the department of revenue on a form provided by the department. The application must include:

(a) the description of the personal property that may qualify for the taxable value decrease;

(b) the date on which the qualifying property is intended to be operational;

(c) the rate of pay and number of existing employees and new employees to be used in the operation of the qualifying property;

(d) a statement that the new employees are in addition to the existing workforce of the industry and the specific responsibilities of each new employee; and

(e) a statement that all the applicant's taxes are paid in full.

(3) The department shall make an initial determination as to whether the industry qualifies for the taxable value decrease.

(4) (a) If the department determines that the property qualifies for a taxable value decrease, the governing body of the affected county, consolidated government, incorporated city or town, or school district shall give due notice as defined in 76-15-103 and hold a public hearing. Each governing body may either approve or disapprove the grant of taxable value decrease. A

governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.

(b) The resolution provided for in subsection (4)(a) must include the document that grants approval of the application that was submitted to the department by the taxpayer seeking the taxable value decrease.

(5) The tax reduction described in subsection (1) applies to:

(a) the number of mills levied and assessed by each governing body approving the benefit over which the governing body has sole discretion; and

(b) statewide levies if the governing body approving the tax reduction is a county, consolidated government, or incorporated city or town.

(6) The number of new employees used by the department to calculate the taxable value decrease in subsection (7) must be determined by the wages paid to qualifying employees. A qualifying employee paid the amount of the average wage as determined by the quarterly statistical report published by the department of labor and industry is considered one new employee. Qualifying employees are considered equivalent new employees if they are paid three-quarters of the average wage or more. The qualifying employee is the equivalent of a new employee in the same fraction that his wages are to the average wage, but a qualifying employee may not be considered more than two new employees.

(7) (a) Qualifying property is entitled to a decrease in the taxable rate of class eight property based upon a percentage difference between a possible low rate of 3% and a high rate of the existing class eight property tax rate. The reduced taxable value rate is determined by calculating the inverse of the number of equivalent new employees divided by the number of existing employees and multiplying the product of that calculation by the decimal equivalent of the tax rate for class eight property.

(b) For each year that the taxable value decrease is in effect, the taxpayer shall report by March 1 to the department, on forms prescribed by the department, the wages of and the number of qualifying employees that are used in the operation of the qualifying property for which the taxable value decrease was granted.

History: En. Sec. 3, Ch. 786, L. 1991.

CHAPTER 35 COAL SEVERANCE TAX

Part 1 General Provisions

15-35-108. (Temporary) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 2.9% must be credited to the oil, gas, and coal natural resource account established in 90-6-1001.

(8) After the allocations are made under subsections (2) through (7), \$250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) (a) Subject to subsection (9)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from \$140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) \$65,000 to the cooperative development center;

(ii) \$1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) \$3.65 million to the research and commercialization state special revenue account created in 90-3-1002;

(iv) to the department of commerce:

(A) \$125,000 for a small business development center;

(B) \$50,000 for a small business innovative research program;

(C) \$425,000 for certified regional development corporations;

(D) \$200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) \$300,000 for export trade enhancement. (*Terminates June 30, 2010—sec. 6, Ch. 481, L. 2003.*)

15-35-108. (Effective July 1, 2010) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 2.9% must be credited to the oil, gas, and coal natural resource account established in 90-6-1001.

(8) After the allocations are made under subsections (2) through (7), \$250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

History: En. 84-1309.1 by Sec. 2, Ch. 432, L. 1973; amd. Sec. 1, Ch. 250, L. 1974; amd. Sec. 4, Ch. 501, L. 1975; amd. Sec. 3, Ch. 502, L. 1975; amd. and redes. 84-1319 by Sec. 8, Ch. 525, L. 1975; amd. Sec. 2, Ch. 156, L. 1977; amd. Sec. 1, Ch. 540, L. 1977; amd. Sec. 2, Ch. 549, L. 1977; R.C.M. 1947, 84-1319; amd. Sec. 1, Ch. 653, L. 1979; amd. Sec. 1, Ch. 694, L. 1979; amd. Sec. 1, Ch. 479, L. 1981; amd. Sec. 43, Ch. 505, L. 1981; amd. Sec. 3, Ch. 281, L. 1983; amd. Sec. 5, Ch. 541, L. 1983; amd. Sec. 1, Ch. 246, L. 1985; amd. Sec. 1, Ch. 715, L. 1985; amd. Sec. 1, Ch. 3, Sp. L. June 1986; amd. Sec. 1, Ch. 19, Sp. L. June 1986; amd. Sec. 1, Ch. 662, L. 1987; amd. Sec. 17, Ch. 83, L. 1989; amd. Sec. 1, Ch. 626, L. 1989; amd. Sec. 4, Ch. 11, Sp. L. June 1989; amd. Sec. 13, Ch. 16, L. 1991; amd. Sec. 3, Ch. 191, L. 1991; amd. Sec. 1, Ch. 615, L. 1991; amd. Sec. 1, Ch. 8, Sp. L. January 1992; amd. Sec. 1, Ch. 16, Sp. L. January 1992; amd. Sec. 5, Ch. 455, L. 1993; amd. Sec. 1, Ch. 536, L. 1993; amd. Sec. 12, Ch. 18, L. 1995; amd. Sec. 1, Ch. 442, L. 1995; amd. Sec. 1, Ch. 456, L. 1995; amd. Sec. 7, Ch. 509, L. 1995; amd. Sec. 9, Ch. 422, L. 1997; amd. Sec. 10, Ch. 469, L. 1997; amd. Sec. 8, Ch. 389, L. 1999; amd. Secs. 1, 2, Ch. 10, Sp. L. May 2000; amd. Secs. 3, 38, Ch. 34, L. 2001; amd. Sec. 1, Ch. 61, L. 2001; amd. Sec. 41, Ch. 483, L. 2001; amd. Sec. 2, Ch. 9, Sp. L. August 2002; amd. Sec. 1, Ch. 12, Sp. L. August 2002; amd. Sec. 7, Ch. 13, Sp. L. August 2002; amd. Sec. 1, Ch. 32, L. 2003; amd. Sec. 2, Ch. 351, L. 2003; amd. Secs. 1, 4, Ch. 481, L. 2003; amd. Sec. 1, Ch. 589, L. 2005; amd. Secs. 2, 8(1), Ch. 603, L. 2005; amd. Sec. 1, Ch. 280, L. 2007; amd. Sec. 2, Ch. 475, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 280 inserted (8) requiring \$250,000 to be credited to coal and uranium mine permitting and reclamation program account after allocations; and made minor changes in style. Amendment effective July 1, 2007.

Chapter 475 in introductory clause substituted "17-2-124" for "15-1-501". Amendment effective May 8, 2007.

Applicability: Section 5, Ch. 280, L. 2007, provided: "[This act] applies to severance tax collections from coal produced after June 30, 2007."

Retroactive Applicability: Section 31, Ch. 475, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable."

CHAPTER 36 OIL AND GAS PRODUCTION TAX

Part 3 Oil and Gas Production Tax Act

15-36-314. Deficiency assessment — review — penalty and interest. (1) If the department determines that the amount of the tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) Penalty and interest must be added to a deficiency assessment as provided in 15-1-216.

History: En. Sec. 11, Ch. 451, L. 1995; amd. Sec. 1, Ch. 295, L. 1997; amd. Sec. 35, Ch. 51, L. 1999; amd. Sec. 20, Ch. 427, L. 1999; amd. Sec. 6, Ch. 522, L. 2003; amd. Sec. 19, Ch. 594, L. 2005.

15-36-315. Credit or refund for overpayment — refund from county — interest on overpayment. (1) If the department determines that the amount of tax, penalty, or interest due for any taxable period is less than the amount paid, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) (a) The amount of an overpayment credited against any tax, penalty, or interest due for any tax period or any refund or portion of a refund, which has not been distributed pursuant to 15-36-332, must be withheld from the current distribution made pursuant to 15-36-332.

(b) If the amount of the refund reduces the amount of tax previously distributed pursuant to 15-36-332 and if the current distribution, if any, is insufficient to offset the refund, then the department shall demand the amount of the refund from the county to which the tax was

originally distributed. The county treasurer shall remit the amount demanded within 30 days of the receipt of notice from the department.

(3) A refund that is paid by the department for an overpayment of the local government severance tax for oil or natural gas production occurring after December 31, 1988, and before January 1, 1995, must be treated as issued for the current distribution period for distribution purposes, and the refund must be apportioned in the same manner as taxes are distributed pursuant to 15-36-332.

(4) Except as provided in subsection (5), interest must be allowed on overpayments at the same rate as is charged on unpaid taxes provided in 15-1-216 beginning from the due date of the return or from the date of overpayment, whichever date is later, to the date on which the department approves refunding or crediting of the overpayment.

(5) (a) Interest may not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date on which the return is due or from the date on which the return is filed, whichever is later; or

(ii) if the amount of interest is less than \$1.

History: En. Sec. 12, Ch. 451, L. 1995; amd. Sec. 2, Ch. 295, L. 1997; amd. Sec. 36, Ch. 51, L. 1999; amd. Sec. 21, Ch. 427, L. 1999; amd. Sec. 7, Ch. 522, L. 2003.

CHAPTER 37 MINING LICENSE TAXES

Part 1 Metalliferous Mines

15-37-117. Disposition of metalliferous mines license taxes. (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 17-2-124, be allocated as follows:

(a) to the credit of the general fund of the state, 57% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 2.5% of total collections each year;

(c) to the hard-rock mining reclamation debt service fund established in 82-4-312, 8.5% of total collections each year;

(d) to the natural resources operations state special revenue account established in 15-38-301, 7% of total collections each year; and

(e) within 60 days of the date the tax is payable pursuant to 15-37-105, to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 37.5% to the county hard-rock mine trust account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(e)(i) to be further allocated as follows:

(A) 33 1/3% is allocated to the county for general planning functions or economic development activities as described in 7-6-2225(3)(c) through (3)(e);

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(e) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(e). The allocation to the county described by subsection (1)(e) is a statutory appropriation pursuant to 17-7-502.

History: En. Sec. 1, Ch. 619, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 8, Ch. 672, L. 1989; amd. Sec. 2, Ch. 760, L. 1991; amd. Sec. 7, Ch. 15, Sp. L. July 1992; amd. Sec. 8, Ch. 455, L. 1993; amd. Sec. 14, Ch. 18, L. 1995; amd. Sec. 1, Ch. 31, L. 1995; amd. Secs. 1, 8, Ch. 577, L. 1995; amd. Sec. 21, Ch. 584, L. 1995; amd. Sec. 1, Ch. 415, L. 1997; amd. Sec. 3, Ch. 144, L. 1999; amd. Sec. 1, Ch. 464, L. 1999; amd. Sec. 5, Ch. 460, L. 2001; amd. Sec. 3, Ch. 12, Sp. L. August 2002; amd. Sec. 7, Ch. 19, Sp. L. August 2002; amd. Sec. 3, Ch. 598, L. 2005; amd. Sec. 2, Ch. 432, L. 2007; amd. Sec. 4, Ch. 475, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 432 in (1)(d) in introductory clause substituted “natural resources operations state special revenue account established in 15-38-301” for “reclamation and development grants program state special revenue account”; and made minor changes in style. Amendment effective July 1, 2007.

Chapter 475 in (1) in introductory clause after “provisions of” substituted “17-2-124” for “15-1-501”. Amendment effective May 8, 2007.

Retroactive Applicability: Section 31, Ch. 475, L. 2007, provided: “[This act] applies retroactively, within the meaning of 1-2-109, to all tax and fee periods beginning after December 31, 2006, and to taxes and fees collected by audit after December 31, 2006, or taxes and fees collected after December 31, 2006, if the payment was made after the date on which the tax was payable.”

CHAPTER 70 GASOLINE AND VEHICLE FUELS TAXES

Part 3 Special Fuels Use Tax

15-70-356. Refund or credit authorized. (1) A person who purchases and uses any special fuel on which the Montana special fuel license tax has been paid for operating stationary special fuel engines used off the public highways and streets or for any commercial use other than operating vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the special fuel used if the person has records, as provided in 15-70-323, to prove nontaxable use. The refund may not exceed the tax paid or to be paid to the state.

(2) (a) The United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state is entitled to a refund of the taxes paid on special fuel regardless of the use of the special fuel.

(b) (i) A nonpublic school may use dyed special fuel in buses that are owned by the nonpublic school if the buses are used for the transportation of pupils solely for nonsectarian school-related purposes.

(ii) For the purposes of this subsection (2)(b), nonpublic schools are those schools that have been accredited pursuant to 20-7-102.

(3) A distributor who pays the special fuel license tax to this state erroneously is allowed a credit or refund of the amount of tax paid.

(4) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of special fuel with a tax liability of \$200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor shall have declared the accounts of the purchaser worthless not more than once during a 3-year period and claimed those accounts as bad debts for federal or state income tax purposes.

(b) If a credit has been granted under subsection (4)(a), any amount collected on the accounts declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(5) A person who purchases and exports for sale, use, or consumption outside Montana any special fuel on which the Montana special fuel tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state where fuel is destined. Upon completion of the reports required under 15-70-351, the department shall authorize the credit or refund.

History: En. Sec. 36, Ch. 525, L. 1993; amd. Sec. 15, Ch. 10, Sp. L. November 1993; amd. Sec. 1, Ch. 569, L. 1995; amd. Sec. 8, Ch. 340, L. 1999; amd. Sec. 6, Ch. 384, L. 2005.

TITLE 17

STATE FINANCE

CHAPTER 3

FEDERAL REVENUES AND ENDOWMENTS

Part 2

Distribution of Federal Return on State Resources

17-3-201. Repealed. Sec. 6, Ch. 20, Sp. L. June 1986.

History: En. Sec. 1, Ch. 246, L. 1973; amd. Sec. 1, Ch. 357, L. 1977; R.C.M. 1947, 79-211; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 541, L. 1983.

17-3-202 through 17-3-210 reserved.

17-3-211. Forest reserve money and other federal funds. (1) The state treasurer, for the purpose of carrying out the provisions of 16 U.S.C. 500, Public Law 106-393, and all acts subsequent to them, shall divide and distribute all forest reserve and Public Law 106-393 funds received by the state, plus interest earned, to and among the several counties entitled to the funds and pay the amounts to the several county treasurers of the counties within 30 days after receiving full payment, as directed by the department.

(2) The forest reserve money and the Public Law 106-393 money must be invested and all investment earnings credited to the forest reserve account or the Public Law 106-393 account, as appropriate.

History: En. Sec. 1, Ch. 26, L. 1915; re-en. Sec. 175, R.C.M. 1921; re-en. Sec. 175, R.C.M. 1935; R.C.M. 1947, 79-203; amd. Sec. 1, Ch. 712, L. 1985; amd. Sec. 1, Ch. 334, L. 2001; amd. Sec. 1, Ch. 74, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 74 in (1) at end after "directed by the" substituted "department" for "state auditor". Amendment effective July 1, 2007.

17-3-212. Apportionment of forest reserve funds and other federal funds among counties. (1) The forest reserve funds, all Public Law 106-393 funds, and earned interest are statutorily appropriated, as provided in 17-7-502, from the federal special revenue fund to the department. The department shall apportion all forest reserve funds, all Public Law 106-393 funds, and earned interest for allocation among the counties in which the forest reserve is situated based upon federal law and this section.

(2) The state treasurer shall pay the apportioned amounts plus interest, as provided in 17-3-211, to the respective counties.

History: En. Sec. 2, Ch. 26, L. 1915; re-en. Sec. 176, R.C.M. 1921; re-en. Sec. 176, R.C.M. 1935; R.C.M. 1947, 79-204; amd. Sec. 16, Ch. 703, L. 1985; amd. Sec. 2, Ch. 712, L. 1985; amd. Sec. 11, Ch. 389, L. 1999; amd. Sec. 2, Ch. 334, L. 2001; amd. Sec. 2, Ch. 74, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 74 in (1) at end of first sentence after "fund to the" and at beginning of second sentence after "The" substituted "department" for "state auditor". Amendment effective July 1, 2007.

17-3-213. Allocation of forest reserve funds and other federal funds — options provided in federal law. (1) The board of county commissioners in each county shall decide among payment options provided in subsections (2) through (4), as provided in Public Law

106-393, to determine how the forest reserve funds and Public Law 106-393 funds apportioned to each county must be distributed by the county treasurer pursuant to this section.

(2) If a board of county commissioners chooses to receive a payment that is 25% of the revenue derived from national forest system lands, as provided in 16 U.S.C. 500, all funds received must be distributed as provided in subsection (5).

(3) (a) Except as provided in subsection (4), if a county elects to receive the county's full payment under Public Law 106-393, a minimum of 80% up to a maximum of 85% of the county's full payment must be designated by the county for distribution as provided in subsection (5).

(b) The balance not distributed pursuant to subsection (3)(a) may be allocated by the county in accordance with Public Law 106-393.

(4) If a county's full payment is less than \$100,000, the county may elect to distribute up to 100% of the payment as provided in subsection (5).

(5) The total amount designated by a county in accordance with subsection (3)(a) or (4) must be distributed as follows:

(a) to the general road fund, 66 $\frac{2}{3}$ % of the amount designated;

(b) to the following countywide school levies, 33 $\frac{1}{3}$ % of the amount designated:

(i) county equalization for elementary schools provided for in 20-9-331;

(ii) county equalization for high schools provided for in 20-9-333;

(iii) the county transportation fund provided for in 20-10-146; and

(iv) the elementary and high school district retirement fund obligations provided for in 20-9-501.

(6) The apportionment of money to the funds provided for under subsection (5)(b) must be made by the county superintendent based on the proportion that the mill levy of each fund bears to the total number of mills for all the funds. Whenever the total amount of money available for apportionment under subsection (5)(b) is greater than the total requirements of a levy, the excess money and any interest income must be retained in a separate reserve fund, to be reapportioned in the ensuing school fiscal year to the levies designated in subsection (5)(b).

(7) In counties in which special road districts have been created according to law, the board of county commissioners shall distribute a proportionate share of the 66 $\frac{2}{3}$ % distributed under subsection (5)(b) for the general road fund to the special road districts within the county based upon the percentage that the total area of the road district bears to the total area of the entire county.

History: En. Sec. 3, Ch. 26, L. 1915; re-en. Sec. 177, R.C.M. 1921; amd. Sec. 1, Ch. 66, L. 1931; re-en. Sec. 177, R.C.M. 1935; R.C.M. 1947, 79-205; amd. Sec. 1, Ch. 413, L. 1983; amd. Sec. 5, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 711, L. 1991; amd. Sec. 3, Ch. 334, L. 2001.

17-3-214. Repealed. Sec. 253, Ch. 574, L. 2001.

History: En. Sec. 4, Ch. 26, L. 1915; re-en. Sec. 178, R.C.M. 1921; re-en. Sec. 178, R.C.M. 1935; R.C.M. 1947, 79-206.

17-3-215 through 17-3-220 reserved.

17-3-221. State treasurer to be custodian of money received under Taylor Grazing Act. The state treasurer is the custodian of all money that the treasurer of the United States transfers to the state of Montana under the terms of section 10 of the Taylor Grazing Act, 43 U.S.C. 315i, to be expended as the legislature may prescribe. The money must be deposited in the federal special revenue fund.

History: En. Sec. 1, Ch. 146, L. 1935; re-en. Sec. 191.1, R.C.M. 1935; R.C.M. 1947, 79-701; amd. Sec. 94, Ch. 42, L. 1997; amd. Sec. 10, Ch. 532, L. 1997.

17-3-222. Apportionment of money to counties. (1) The state treasurer shall apportion the money received under 17-3-221 to the appropriate counties and then allocate the money due each county as follows:

(a) 50% to the county treasurer for deposit in the county general fund; and

(b) 50% to the state general fund to be used for the elementary BASE funding programs of the school districts in the county.

(2) The payments from the state to the county treasurers provided for in subsection (1) are statutorily appropriated as provided in 17-7-502.

History: En. Sec. 2, Ch. 146, L. 1935; re-en. Sec. 191.2, R.C.M. 1935; amd. Sec. 1, Ch. 55, L. 1937; amd. Sec. 1, Ch. 102, L. 1939; amd. Sec. 1, Ch. 96, L. 1949; R.C.M. 1947, 79-702; amd. Sec. 2, Ch. 22, L. 1997; amd. Sec. 11, Ch. 532, L. 1997; amd. Sec. 45, Ch. 51, L. 1999; amd. Sec. 4, Ch. 41, L. 2003; amd. Sec. 1, Ch. 53, L. 2005.

17-3-223 through 17-3-230 reserved.

17-3-231. Flood Control Act — distribution of revenues to counties. All moneys received or hereafter to be received by the state from the secretary of the treasury of the United States, under and by virtue of the Flood Control Act of 1954, under 33 U.S.C. 701c-3, shall be distributed by the state to the county treasurers of the counties of the state wherein the flood control land is situated.

History: En. Sec. 1, Ch. 156, L. 1959; R.C.M. 1947, 79-2101.

17-3-232. Deposit and expenditure of funds by counties. All moneys received or to be received by the county treasurers of the counties of the state wherein such flood control land is situated shall be deposited in the funds designated as the county common school tax fund and the general public road fund and shall be expended as follows: of all moneys received or to be received, 50% shall be expended for the benefit of the county common schools in the county concerned and 50% shall be expended for the benefit of the general public roads in the county concerned.

History: En. Sec. 2, Ch. 156, L. 1959; R.C.M. 1947, 79-2102.

17-3-233 through 17-3-239 reserved.

17-3-240. Federal mineral leasing funds. (1) Except as provided in subsection (2), money paid to the state pursuant to 30 U.S.C. 191 must be deposited in the state general fund.

(2) In fiscal year 2005 and each succeeding fiscal year, 25% of all money received pursuant to subsection (1) must be deposited in the mineral impact account established in 17-3-241 and is dedicated to local governments.

(3) On August 15 following the close of the fiscal year, the state treasurer shall distribute the revenue dedicated in subsection (2). The distribution to the eligible counties must be based on the proportion that the total amount of revenue generated by mineral extraction in an eligible county bears to the total amount of money received by the state.

History: En. Sec. 1, Ch. 594, L. 2001; amd. Sec. 1, Ch. 5, Sp. L. August 2002; amd. Sec. 1, Ch. 568, L. 2005.

17-3-241. Mineral impact account. There is a mineral impact account. Money must be deposited in the impact account as provided in 17-3-240. The money in the impact account must be distributed to counties from which the minerals were produced that resulted in the deposit of the mineral royalty revenue in the impact account. Beginning July 1, 2003, the impact account is statutorily appropriated, as provided in 17-7-502.

History: En. Sec. 2, Ch. 594, L. 2001.

TITLE 18

PUBLIC CONTRACTS

CHAPTER 1

PUBLIC CONTRACTS GENERALLY

Part 1

Preferences and General Matters

18-1-101. Definitions. (1) Unless the context requires otherwise, in this title, “department” means the department of administration provided for in Title 2, chapter 15, part 10.

(2) Unless the context requires otherwise, in this part, the following definitions apply:

(a) “Goods” means supplies, equipment, materials, commodities, and specially manufactured products.

(b) “Nonresident bidder” means a bidder whose residence is not in this state as determined under 18-1-103.

(c) (i) “Public agency” means a department, commission, council, board, bureau, committee, institution, agency, government corporation, or other entity, instrumentality, or official of the legislative, executive, or judicial branch of this state and its political subdivisions, including the board of regents and the Montana university system.

(ii) Public agency does not include a political subdivision for purposes of 18-1-102(1)(b).

(d) “Resident bidder” means a bidder whose residence is in this state as determined under 18-1-103.

(e) “Written” means that whenever written or in-writing determinations or documents are required, the public agency responsible for the procurement may specify an appropriate visual medium, such as by computer transmission or by facsimile machine transmission, in the specifications, contract, or rules of the public agency.

History: En. 82-1901.1 by Sec. 57, Ch. 326, L. 1974; R.C.M. 1947, 82-1901.1; amd. Sec. 1, Ch. 512, L. 1987; amd. Sec. 1, Ch. 443, L. 1997; amd. Sec. 8, Ch. 181, L. 2001.

18-1-102. State contracts to lowest bidder — reciprocity. (1) In order to provide for an orderly administration of the business of the state of Montana in awarding public contracts for the purchase of goods and for construction, repair, and public works of all kinds, a public agency shall, except as provided in Title 18, chapter 2, part 5, award:

(a) a public contract for construction, repair, or public works to the lowest responsible bidder without regard to residency. However, a resident bidder must be allowed a preference on a contract against the bid of a nonresident bidder from any state or country that enforces a preference for resident bidders. The preference given to resident bidders of this state must be equal to the preference given in the other state or country.

(b) a public contract for the purchase of goods to the lowest responsible bidder without regard to residency. However, a resident must be allowed a preference on a contract against the bid of a nonresident if the state or country of the nonresident enforces a preference for residents. The preference must be equal to the preference given in the other state or country.

(2) The preferences in this section apply:

(a) whether the law requires advertisement for bids or does not require advertisement for bids; and

(b) to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant to federal laws.

History: En. Sec. 1, Ch. 183, L. 1961; amd. Sec. 1, Ch. 197, L. 1969; R.C.M. 1947, 82-1924; amd. Sec. 1, Ch. 468, L. 1985; amd. Sec. 2, Ch. 512, L. 1987; amd. Sec. 1, Ch. 32, L. 1991; amd. Sec. 1, Ch. 306, L. 1999; amd. Sec. 9, Ch. 181, L. 2001; amd. Sec. 6, Ch. 574, L. 2005.

18-1-103. Resident defined. (1) For the purpose of 18-1-102 and this section, the word “resident” includes actual residence of an individual within this state for a period of more than 1 year immediately prior to bidding.

(2) In a partnership enterprise, limited liability company, or association, the majority of all partners or members must have been actual residents of the state of Montana for more than 1 year immediately prior to bidding.

(3) Domestic corporations organized under the laws of the state of Montana are prima facie eligible to bid as residents, but this qualification may be set aside and a successful bid disallowed when it is shown to the satisfaction of the board, commission, officer, or individual charged with the responsibility for the execution of the contract that the corporation is a wholly owned subsidiary of a foreign corporation or that the corporation was formed for the purpose of circumventing the provisions relating to residence.

History: En. Sec. 2, Ch. 183, L. 1961; amd. Sec. 2, Ch. 197, L. 1969; amd. Sec. 1, Ch. 74, L. 1974; R.C.M. 1947, 82-1925; amd. Sec. 1, Ch. 284, L. 1987; amd. Sec. 58, Ch. 370, L. 1987; amd. Sec. 3, Ch. 512, L. 1987; amd. Sec. 100, Ch. 42, L. 1997; amd. Sec. 10, Ch. 181, L. 2001.

18-1-104. Repealed. Sec. 2, Ch. 92, L. 1979.

History: En. Sec. 1, Ch. 217, L. 1967; amd. Sec. 61, Ch. 391, L. 1973; R.C.M. 1947, 82-1925.1(part).

18-1-105. Repealed. Sec. 2, Ch. 92, L. 1979.

History: En. Sec. 1, Ch. 217, L. 1967; amd. Sec. 61, Ch. 391, L. 1973; R.C.M. 1947, 82-1925.1(part).

18-1-106. Department of labor and industry to determine residency of selected contractors — applications for redetermination — determination as prima facie evidence. (1) The department of labor and industry shall determine whether or not certain contractors are residents of the state of Montana within the meaning of 18-1-102 and 18-1-103. Any public agency charged by law with the responsibility for the execution of any contract subject to the provisions of 18-1-102 may request that a determination of resident or nonresident status be made by the department of labor and industry. All requests must specify the name and address of the licensed public contractor for whom a determination of resident or nonresident status is required.

(2) If a determination is made that a public contractor is not a resident but the public contractor later qualifies as a resident, the contractor may apply to the department of labor and industry for a redetermination of residency. If, upon redetermination, the public contractor is found to qualify as a resident, the contractor must be furnished a letter by the department of labor and industry attesting to resident status.

(3) The determination of the department of labor and industry that a public contractor is or is not a resident within the meaning of 18-1-102 and 18-1-103 is prima facie evidence of that fact.

History: En. Sec. 1, Ch. 92, L. 1979; amd. Sec. 1, Ch. 2, L. 1985; amd. Sec. 9, Ch. 558, L. 1995; amd. Sec. 46, Ch. 483, L. 2001.

18-1-107 through 18-1-109 reserved.

18-1-110. Hiring preference for residents of Indian reservations for state construction projects within reservation — rules. (1) For any contract awarded by a state agency for a state construction project within the exterior boundaries of an Indian reservation, except a project partially funded with federal-aid money from the United States department of transportation or when residency preference laws are specifically prohibited by federal law, there must be inserted in the bid specification and the contract a provision, in language approved by the commissioner of labor and industry, implementing the requirements of this subsection. The bid specification and the contract must provide that a preference in hiring for positions of employment be given to Indian residents of the reservation who have substantially equal qualifications for any position. For the purposes of this section, the definitions in 2-18-111 apply.

(2) The commissioner of labor and industry shall enforce this section, investigate complaints of its violation, and may adopt rules to implement this section.

History: En. Sec. 2, Ch. 506, L. 1991.

18-1-111. Impartiality to be shown in letting contracts. The department may not show any partiality or favoritism not provided for by law in making awards or contracts.

History: En. Sec. 10, Ch. 66, L. 1923; re-en. Sec. 293.10, R.C.M. 1935; amd. Sec. 75, Ch. 326, L. 1974; R.C.M. 1947, 82-1920; amd. Sec. 2, Ch. 284, L. 1987; amd. Sec. 11, Ch. 181, L. 2001.

18-1-112. Repealed. Sec. 26, Ch. 181, L. 2001.

History: En. Sec. 3, Ch. 183, L. 1961; amd. Sec. 3, Ch. 197, L. 1969; amd. Sec. 6, Ch. 97, L. 1977; R.C.M. 1947, 82-1926; amd. Sec. 4, Ch. 512, L. 1987.

18-1-113. Bidder to submit affidavit — penalty. (1) A bidder on a public contract for goods who is claiming a preference under this part shall either have on file with or submit to the public agency with its bid an affidavit specifying in detail, as determined by rule by the department, the basis on which the bidder claims the preference.

(2) If the public agency determines that the bidder has submitted a false affidavit under subsection (1), the bidder is disqualified as a bidder for future public contracts for goods with any public agency for a period of 5 years from the date of the determination.

History: En. Sec. 6, Ch. 512, L. 1987.

18-1-114. Rules. The department shall adopt rules necessary to administer the preferences provided in this part. The department's rules apply to all public agencies.

History: En. Sec. 7, Ch. 512, L. 1987.

18-1-115 through 18-1-117 reserved.

18-1-118. Access to records of contracting entities. Money may not be spent by a state agency under a contract with a nonstate entity unless the contract contains a provision that allows the legislative auditor sufficient access to the records of the nonstate entity to determine

whether the parties have complied with the terms of the contract. The access to records is necessary to carry out the functions provided for in Title 5, chapter 13. A state agency may terminate a contract, without incurring liability, for the refusal of a nonstate entity to allow access to records as required by this section.

History: En. Sec. 12, Ch. 787, L. 1991; amd. Sec. 60, Ch. 545, L. 1995; amd. Sec. 2, Ch. 377, L. 1997.

Part 2

Bid Security

18-1-201. Requirement for bidder's security. (1) A "public authority" or "obligee" includes:

- (a) the state of Montana or any department (including the department of administration, unless otherwise authorized by express provision of law), institution, board, commission, agency, authority or subordinate jurisdiction thereof;
- (b) any county or other political subdivision of this state;
- (c) any municipal corporation or authorized subdivision thereof; or
- (d) school districts, irrigation districts, or other public authority organized under the laws of the state of Montana.

(2) Except as provided in 18-4-312, in all cases where a public authority or obligee is authorized by law to solicit bids, tenders, or proposals for public works, improvements, or undertakings of any kind or for the purchase of commodities, goods, or property or for the procurement of technical or special services on a bid basis (exclusive of services on the basis of salaries or wages) or for the sale and purchase of bonds, debentures, notes, or any other forms of indebtedness of any such public authority, the respective executive, administrative, or other officers of and acting for such public authority shall require, as a condition precedent to considering any such bids, as evidence of good faith on the part of the bidder, and as indemnity for the benefit of such public authority against the failure or refusal of any bidder to enter into any written contract that may be awarded upon and following acceptance of bid or as a condition precedent to consummating any sale and purchase of any forms of indebtedness, that any bid shall contain a written covenant of indemnity conditioned as herein prescribed and that the bid shall be accompanied by bid security of the nature herein specified for the performance of such covenant.

History: En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part); amd. Sec. 1, Ch. 424, L. 1985.

18-1-202. Advertisement for bid to specify required security. (1) The advertisement, request, or solicitation for bids or offers must distinctly specify that all bidders, offerors, tenderers, or contractors shall:

(a) whenever bids are solicited other than for purchase of any forms of indebtedness, expressly covenant in any bid that if the bidder is awarded the contract, the bidder will, within the time required as stated in the advertisement or solicitation, enter into a formal contract and give a good and sufficient bond to secure the performance of the terms and conditions of the contract. If a bond is not provided, the bidder shall pay the public authority the difference in money between the amount of the bid of the bidder and the amount for which the public authority legally contracts with another party to perform the work or supply the property, commodities, or services, as the case may be, if the latter amount is in excess of the former.

(b) whenever the bids are solicited for the purchase and sale of any forms of indebtedness of the public authority, expressly covenant that the security accompanying the bid in the amount specified by the public authority must be kept and retained by the public authority as liquidated damages for failure to consummate the purchase of the forms of indebtedness that may be awarded on acceptance of bid and in compliance with the terms of the bid.

(2) The public authority shall distinctly specify in the solicitation or advertisement for bids the penal or other sum fixed by statute to be paid by a bidder failing or refusing as aforesaid whenever the amount of the bid security is fixed by statute. Otherwise, the public authority shall specify the amount, which may not be less than 2% of the principal amount of the indebtedness for a bid for the purchase of indebtedness and 10% of the bid price for any other bid, that it considers reasonably necessary to protect and indemnify the public authority against the failure

or refusal of the bidder to enter into the contract or consummate the purchase of indebtedness, as the case may be.

(3) The advertisement, request, or other solicitation for bids or offers must distinctly specify that a bid bond or other form of security specified in 18-1-203 constitutes compliance with the requirement for bid security.

History: En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part); amd. Sec. 1, Ch. 85, L. 1979; amd. Sec. 1, Ch. 51, L. 1995.

18-1-203. Form of security. (1) (a) In all cases under 18-1-202(1), the bidder, offeror, or tenderer shall accompany any bid with either:

(i) lawful money of the United States;

(ii) a cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by a federally chartered or state-chartered bank insured by the federal deposit insurance corporation; or

(iii) a bid bond, guaranty bond, or surety bond executed by a surety corporation authorized to do business in the state of Montana. If a financial guaranty bond or surety bond is provided to secure the purchase of indebtedness, the long-term indebtedness of the company executing the financial guaranty bond or surety bond must carry an investment grade rating of one or more nationally recognized independent rating agencies.

(b) The public authority soliciting or advertising for bids may not require that a bid bond, guaranty bond, or surety bond provided for in subsection (1)(a)(iii) be furnished by a particular surety company or by a particular insurance producer for a surety company.

(2) The money or, in lieu of money, the bank instruments or bid bonds, financial guaranty bonds, or surety bonds must be payable directly to the public authority soliciting or advertising for bids.

History: En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part); amd. Sec. 11, Ch. 184, L. 1983; amd. Sec. 2, Ch. 51, L. 1995; amd. Sec. 1, Ch. 203, L. 2003.

18-1-204. Forfeiture — bidder's liability — waiver. (1) Except as provided in subsection (3), if in any instance one or more bids be accepted or a sale of any form of indebtedness is ordered or a contract is awarded, any bidder whose bid is accepted and who shall thereafter refuse to enter into and execute the proposed contract or carry out and consummate the purchase of any form of indebtedness, as stated in the covenant in the bid and herein, shall absolutely forfeit such moneys or bank instruments to the public authority concerned and become immediately liable on the bid bond but not in excess of the penal sum therein stated.

(2) In no event shall the bidder's liability, the liability of the maker of the security instrument, or the liability on the bid bond exceed the amount specified by the public authority in the solicitation or advertisement for bids, whether the amount shall be posted in money, be stated as the amount payable in the security instrument, or as the maximum amount payable in the bid bond.

(3) With respect to bids accepted under Title 18, chapter 2, the department may waive the requirement to forfeit bid security.

History: En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part); amd. Sec. 1, Ch. 83, L. 1987.

18-1-205. Return of bid security. The moneys or bank instruments or bid bonds, as the case may be, shall be returned to those bidders whose bids are not accepted.

History: En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part).

18-1-206. Effect of compliance. Nothing contained in this part shall exclude or be construed to excuse compliance with any other requirements for bonds or other or further security after acceptance of bids or following award of contract or excuse compliance with any requirements for performance bonds at any time, as such requirements may be prescribed or authorized by the laws of the state of Montana.

History: En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part).

Part 3 Prepayment of Public Contractors

18-1-301. Contractor withdrawals — deposit of obligations. (1) The contractor under any contract made or awarded by the state of Montana or any department, agency, or political subdivision of the state of Montana, by any county, municipality, or political subdivision of a county or municipality, or by a school district, including any contract for the construction, improvement, maintenance, or repair of any road or highway or the appurtenances to a road or highway, may, from time to time, withdraw the whole or any portion of the sums otherwise due to the contractor under the contract that are retained by the state of Montana or any department, agency, or political subdivision of the state of Montana, by any county, municipality, or political subdivision of a county or municipality, or by a school district pursuant to the terms of the contract, provided the contractor shall deposit with the contracting agency:

(a) United States treasury bonds, United States treasury notes, United States treasury certificates of indebtedness, or United States treasury bills;

(b) bonds or notes of the state of Montana;

(c) bonds of any political subdivision of the state of Montana of a market value not exceeding par at the time of deposit; or

(d) certificates of deposit drawn and issued by a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana.

(2) Deposited obligations must be at least equal in value to the amount so withdrawn from payments retained under the contract.

(3) Except as provided in subsection (4), all interest accrued in the accounts of deposits required under this section must be paid to the contractor.

(4) The contractor shall extend to the contractor's subcontractors the opportunity to participate in making the deposits required in subsection (1). Interest accrued in deposit accounts in which subcontractors participate must be distributed on a pro rata basis by the contractor to the participating subcontractors. A subcontractor participating in making the deposits required in subsection (1) may not have additional retainage withheld by the contractor.

History: En. Sec. 1, Ch. 194, L. 1969; amd. Sec. 1, Ch. 101, L. 1971; R.C.M. 1947, 82-4101; amd. Sec. 1, Ch. 113, L. 1985; amd. Sec. 1, Ch. 222, L. 1999.

18-1-302. Servicing of deposited obligations. After notice to the owner and surety, the contracting agency shall have the power to enter into a contract or agreement with any national bank, state bank, trust company, or safe deposit company located in the state of Montana, designated by the contractor, to provide for the custodial care and servicing of any obligations deposited with it pursuant to this part. Such services shall include the safekeeping of said obligations and the rendering of all services required to effectuate the purposes of this part.

History: En. Sec. 2, Ch. 194, L. 1969; R.C.M. 1947, 82-4102; amd. Sec. 2, Ch. 113, L. 1985.

18-1-303. Interest or income on deposits to contractor. (1) The contracting agency or any national bank, state bank, trust company, or safe deposit company located in the state of Montana, designated by the contractor to serve as custodian for the obligations pursuant to 18-1-302, shall collect all interest or income when due on the obligations so deposited and shall pay the same, when and as collected, to the contractor who deposited the obligation.

(2) If deposited in the form of coupon bonds, the contracting agency or the designated custodian, pursuant to 18-1-302, shall deliver each such coupon as it matures to the contractor.

History: En. Sec. 3, Ch. 194, L. 1969; R.C.M. 1947, 82-4103; amd. Sec. 3, Ch. 113, L. 1985.

18-1-304. Priority of deductions from retained payments and proceeds of deposited obligation. Any amount deducted by the state of Montana or by any department, agency, or political subdivision thereof pursuant to the terms of a contract from the retained payments otherwise due to the contractor thereunder shall be deducted first from that portion of the retained payments for which no obligation has been substituted, then from the proceeds of any deposited obligation. In the latter case, the contractor shall be entitled to receive the

interest, coupons, or income only from those obligations which remain on deposit after such amount has been deducted.

History: En. Sec. 4, Ch. 194, L. 1969; R.C.M. 1947, 82-4104.

CHAPTER 2 CONSTRUCTION CONTRACTS

Part 1 General Provisions

18-2-101. Definitions of building, costs, and construction. In part 1 of this chapter, with the exception of 18-2-104, 18-2-107, 18-2-113, 18-2-114, 18-2-122, and 18-2-123:

- (1) “building” includes a building, facility, or structure:
 - (a) constructed or purchased wholly or in part with state money;
 - (b) at a state institution;
 - (c) owned or to be owned by a state agency, including the department of transportation; or
 - (d) constructed for the use or benefit of the state with federal or private money as provided in 18-2-102(2)(d);
- (2) “building” does not include a building, facility, or structure:
 - (a) owned or to be owned by a county, city, town, school district, or special improvement district;
 - (b) used as a component part of an environmental remediation or abandoned mine land reclamation project, a highway, or a water conservation project, unless the building will require a continuing state general fund financial obligation after the environmental remediation or abandoned mine land reclamation project is completed; or
 - (c) leased or to be leased by a state agency;
- (3) “construction” includes the construction, alteration, repair, maintenance, and remodeling of a building and the equipping and furnishing of a building during construction, alteration, repair, maintenance, and remodeling;
- (4) “costs” means those expenses defined in 17-5-801.

History: En. Sec. 14, Ch. 271, L. 1963; amd. Sec. 1, Ch. 24, L. 1973; amd. Sec. 81, Ch. 326, L. 1974; R.C.M. 1947, 82-3314; amd. Sec. 4, Ch. 388, L. 1979; amd. Sec. 1, Ch. 67, L. 1981; amd. Sec. 1, Ch. 491, L. 1983; amd. Sec. 1, Ch. 7, L. 1985; amd. Sec. 5, Ch. 372, L. 1985; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 1, Ch. 241, L. 1995; amd. Sec. 1, Ch. 392, L. 1997; amd. Sec. 2, Ch. 470, L. 1999; amd. Sec. 6, Ch. 374, L. 2005.

18-2-102. Authority to construct buildings. (1) Except as provided in 22-3-1003 and subsection (2) of this section, a building costing more than \$150,000 may not be constructed without the consent of the legislature. Legislative approval of repair and maintenance costs as part of an agency’s operating budget constitutes the legislature’s consent. When a building costing more than \$150,000 is to be financed in a manner that does not require legislative appropriation of money, the consent may be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building and is authorized to transfer funds and authority as necessary to accomplish the project. Transfers may not be made from the funds for an uncompleted capital project unless the project is under the supervision of the same agency.

(b) The regents of the Montana university system may authorize the construction of revenue-producing facilities referred to in 20-25-302 if they are to be financed wholly from the revenue from the facility.

(c) The regents of the Montana university system, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money if the construction of the building will not result in any new programs.

(d) The regents of the Montana university system may authorize the construction of facilities as provided in 20-25-309.

(e) The department of military affairs, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money on federal land for the use or benefit of the state.

History: En. Sec. 16, Ch. 271, L. 1963; amd. Sec. 2, Ch. 13, L. 1967; amd. Sec. 83, Ch. 326, L. 1974; R.C.M. 1947, 82-3316; amd. Sec. 2, Ch. 7, L. 1985; amd. Sec. 1, Ch. 518, L. 1993; amd. Sec. 2, Ch. 241, L. 1995; amd. Sec. 1, Ch. 249, L. 1997; amd. Sec. 1, Ch. 403, L. 2007; amd. Sec. 2, Ch. 419, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 403 in (1) in exception clause inserted reference to 22-3-1003; and made minor changes in style. Amendment effective May 3, 2007.

Chapter 419 inserted (2)(d) providing that the regents of the Montana university system may authorize the construction of facilities as provided in 20-25-309; and made minor changes in style. Amendment effective May 3, 2007.

18-2-103. Supervision of construction of buildings. (1) For the construction of a building costing more than \$150,000, the department shall:

(a) review and accept all plans, specifications, and cost estimates prepared by architects or consulting engineers;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all money;

(c) solicit, accept, and reject bids and, except as provided in Title 18, chapter 2, part 5, award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of the bid amount;

(d) review and approve all change orders; and

(e) accept the building when completed according to accepted plans and specifications.

(2) The department may delegate on a project-by-project basis any powers and duties under subsection (1) to other state agencies, including units of the Montana university system, upon terms and conditions specified by the department.

(3) Before a contract under subsection (1) is awarded, two formal bids must have been received, if reasonably available.

(4) The department need not require the provisions of Montana law relating to advertising, bidding, or supervision when proposed construction costs are \$75,000 or less. However, with respect to a project having a proposed cost of \$75,000 or less but more than \$25,000, the agency awarding the contract shall procure at least three informal bids from contractors registered in Montana, if reasonably available.

(5) For the construction of buildings owned or to be owned by a school district, the department shall, upon request, provide inspection to ensure compliance with the plans and specifications for the construction of the buildings. "Construction" includes construction, repair, alteration, equipping, and furnishing during construction, repair, or alteration. These services must be provided at a cost to be contracted for between the department and the school district, with the receipts to be deposited in the department's construction regulation account in a state special revenue fund.

(6) It is the intent of the legislature that student housing and other facilities constructed under the authority of the regents of the university system are subject to the provisions of subsections (1) through (3).

(7) The department of military affairs may act as the contracting agency for buildings constructed under the authority of 18-2-102(2)(d). However, the department of administration may agree to act as the contracting agency on behalf of the department of military affairs. Montana law applies to any controversy involving a contract.

History: En. Sec. 17, Ch. 271, L. 1963; amd. Sec. 2, Ch. 264, L. 1969; amd. Sec. 2, Ch. 24, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 487, L. 1977; R.C.M. 1947, 82-3317; amd. Sec. 1, Ch. 16, L. 1979; amd. Sec. 15, Ch. 281, L. 1983; amd. Sec. 2, Ch. 491, L. 1983; amd. Sec. 3, Ch. 7, L. 1985; amd. Sec. 1, Ch. 137, L. 1985; amd. Sec. 1, Ch. 466, L. 1985; amd. Sec. 1, Ch. 467, L. 1985; amd. Sec. 1, Ch. 648, L. 1985; amd. Sec. 1, Ch. 350, L. 1989; amd. Sec. 2, Ch. 518, L. 1993; amd. Sec. 2, Ch. 249, L. 1997; amd. Sec. 1, Ch. 303, L. 1999; amd. Sec. 7, Ch. 574, L. 2005.

18-2-104. Scheduling of state building program. The department of administration shall, by careful advance planning, ordering of construction priorities, consultation with architects, and timing of bid lettings, direct the building program of the state in such a manner as to reduce to a minimum the effects of weather on construction and to stabilize as far as possible the work opportunities of the construction labor force.

History: En. Sec. 1, Ch. 116, L. 1967; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 78-910.

18-2-105. General powers and duties of department of administration. In carrying out powers relating to the construction of buildings, the department of administration may:

- (1) inspect buildings not under construction;
- (2) contract with the federal government for advance planning funds;
- (3) transfer funds and authority to agencies and accept funds and authority from agencies;
- (4) subject to 2-17-135, purchase, lease, and acquire by exchange or otherwise, land and buildings in Lewis and Clark County and equipment and furnishings for the buildings;
- (5) issue and sell bonds and other securities;
- (6) maintain an inventory of all buildings;
- (7) appoint a project representative to supervise architects' and consulting engineers' inspection of construction of buildings to ensure that all construction is in accordance with the contracts, plans, and specifications. The cost of supervision may be charged against money available for construction.

(8) negotiate deductive changes, not to exceed 7% of the total cost of a project, with the lowest responsible bidder when the lowest responsible bid causes the project cost to exceed the appropriation or with the lowest responsible bidders, if multiple contracts will be awarded on the project, when the total of the lowest responsible bids causes the project cost to exceed the appropriation. A bidder is not required to negotiate a bid but is required to honor the bid for the time specified in the bidding documents. The department may terminate negotiations at any time.

History: En. Sec. 18, Ch. 271, L. 1963; amd. Sec. 1, Ch. 203, L. 1965; amd. Sec. 84, Ch. 326, L. 1974; R.C.M. 1947, 82-3318; amd. Sec. 1, Ch. 291, L. 1985; amd. Sec. 3, Ch. 518, L. 1993; amd. Sec. 3, Ch. 249, L. 1997; amd. Sec. 12, Ch. 217, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 217 in (4) at beginning inserted "subject to 2-17-135"; and made minor changes in style. Amendment effective July 1, 2007.

18-2-106. Pecuniary interest prohibited. (1) The director of administration and the state architect may not have a direct or indirect pecuniary interest in any contract, transaction, or project involving the construction of a building.

(2) An employee of the department who is directly responsible for construction procurement may not have a direct pecuniary interest in a contract for the construction of a building unless the contract is awarded through a competitive procurement procedure.

History: En. Sec. 21, Ch. 271, L. 1963; amd. Sec. 85, Ch. 326, L. 1974; R.C.M. 1947, 82-3321; amd. Sec. 2, Ch. 303, L. 1999.

18-2-107. Deposit of capitol building grant revenue. (1) The state treasurer shall deposit in a capital projects fund all revenue from the capitol building land grant after any deductions made under 77-1-109, Title 77, chapter 1, part 6, and 77-2-362.

(2) The funds must be held and dedicated for the purpose of constructing capitol buildings or additions to buildings in accordance with the provisions of section 12 of The Enabling Act.

History: (1) En. Sec. 1, Ch. 120, L. 1943; amd. Sec. 49, Ch. 147, L. 1963; Sec. 78-501, R.C.M. 1947; (2) En. Sec. 3, Ch. 120, L. 1943; amd. Sec. 50, Ch. 147, L. 1963; Sec. 78-503, R.C.M. 1947; R.C.M. 1947, 78-501, 78-503; amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 6, Ch. 533, L. 1993; amd. Sec. 4, Ch. 122, L. 1999; amd. Sec. 3, Ch. 355, L. 2003.

18-2-108. Compliance with state laws and regulations. All buildings built or leased or purchased under this title must comply with all laws, safety codes, and rules of the state of Montana.

History: En. 82-3315.8 by Sec. 8, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.8.

18-2-109 and 18-2-110 reserved.

18-2-111. Policy regarding practice of architecture — preparation of working drawings by department limited. (1) It is the policy of the state not to engage in the practice of architecture. However, this policy may not be construed as prohibiting the department of administration from:

- (a) engaging in preplanning functions necessary to prepare a building program for presentation to the legislature;
- (b) supervising construction as provided in 18-2-105(7); or
- (c) preparing working drawings for minor projects.

(2) The department of administration may not prepare working drawings for the construction of a building, with the exception of repair or maintenance projects, when the total cost of the construction will exceed \$75,000.

History: En. Sec. 20, Ch. 271, L. 1963; amd. Sec. 1, Ch. 371, L. 1977; R.C.M. 1947, 82-3320; amd. Sec. 3, Ch. 491, L. 1983; amd. Sec. 4, Ch. 518, L. 1993; amd. Sec. 1, Ch. 470, L. 1995.

18-2-112. Appointment of architects and consulting engineers. The department of administration shall appoint any architect or consulting engineer retained for work on any building to be constructed, remodeled, or renovated by the state of Montana, its boards, institutions, and agencies from a list of three architects or consulting engineers proposed by the state board, institution, or agency where the work is to be done. The department need not appoint an architect or consulting engineer for repair or maintenance projects.

History: En. Sec. 19, Ch. 271, L. 1963; amd. Sec. 1, Ch. 231, L. 1965; amd. Sec. 1, Ch. 83, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 82-3319; amd. Sec. 4, Ch. 491, L. 1983; amd. Sec. 2, Ch. 22, L. 1993; amd. Sec. 5, Ch. 518, L. 1993.

18-2-113. Architects on public buildings to be certified. A contract for the employment of or the rendering of professional services by any person relating to the planning or construction of public buildings or other public works or improvements may not be entered into by this state or its agencies or a county, city, or school district in this state unless the person is the holder in good standing of a license granted under Title 37, chapter 65, by the board of architects and landscape architects.

History: En. Sec. 1, Ch. 190, L. 1953; amd. Sec. 32, Ch. 350, L. 1974; amd. Sec. 6, Ch. 544, L. 1977; R.C.M. 1947, 66-113; amd. Sec. 7, Ch. 11, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 11 at end substituted "license granted under Title 37, chapter 65, by the board of architects and landscape architects" for "certificate granted by the board of architects entitling him to practice architecture in this state". Amendment effective July 1, 2007.

18-2-114. Seal and signature of architect on plans. All architectural plans and specifications for public buildings of the state of Montana or any agency thereof or of any county, city, or school district of the state shall bear the seal and signature of the architect responsible therefor.

History: En. Sec. 2, Ch. 190, L. 1953; amd. Sec. 1, Ch. 68, L. 1957; amd. Sec. 1, Ch. 167, L. 1961; amd. Sec. 1, Ch. 220, L. 1965; amd. Sec. 1, Ch. 131, L. 1967; amd. Sec. 7, Ch. 544, L. 1977; R.C.M. 1947, 66-114(part).

18-2-115. Repealed. Sec. 12, Ch. 388, L. 1979.

History: En. Sec. 2, Ch. 190, L. 1953; amd. Sec. 1, Ch. 68, L. 1957; amd. Sec. 1, Ch. 167, L. 1961; amd. Sec. 1, Ch. 220, L. 1965; amd. Sec. 1, Ch. 131, L. 1967; amd. Sec. 7, Ch. 544, L. 1977; R.C.M. 1947, 66-114(part).

18-2-116 through 18-2-120 reserved.

18-2-121. Engineer or land surveyor to supervise project. This state and its political subdivisions such as counties, cities, towns, townships, boroughs, or other political entities or legally constituted boards, commissions, or authorities or officials or employees thereof shall not engage in the practice of engineering or land surveying involving either public or private property without the project being under the direct charge and supervision of a professional engineer for engineering projects or land surveyor for all land surveying projects, as provided for the practice of the respective professions by Title 37.

History: En. 66-2363 by Sec. 11, Ch. 366, L. 1975; R.C.M. 1947, 66-2363(part).

18-2-122. Plans to bear seal. This state and its political subdivisions such as counties, cities, towns, townships, boroughs, or other political entities or legally constituted boards, commissions, or authorities or officials or employees thereof may not accept plans and specifications for public buildings, water systems and storage facilities, sewerage systems, wastewater disposal projects, swimming pools, recreational facilities, and similar type projects which may have a direct bearing on the public health and safety for approval unless they bear the seal of the professional engineer for engineering projects or the professional land surveyor for land surveying projects or licensed architect for architectural projects, as provided for the practice of the respective professions by Title 37.

History: En. 66-2363 by Sec. 11, Ch. 366, L. 1975; R.C.M. 1947, 66-2363(part); amd. Sec. 24, Ch. 83, L. 1989.

18-2-123. Payment of contractors and subcontractors. Notwithstanding any other provision of this title, payment of a construction contractor or subcontractor, as those terms are

defined in 28-2-2101, for services performed by a construction contractor or subcontractor is governed by the provisions of Title 28, chapter 2, part 21.

History: En. Sec. 1, Ch. 470, L. 1999.

18-2-124. Construction contract indemnification provisions. (1) Except as provided in subsections (2) and (3), a construction contract provision that requires one party to the contract to indemnify, hold harmless, insure, or defend the other party to the contract or the other party's officers, employees, or agents for liability, damages, losses, or costs that are caused by the negligence, recklessness, or intentional misconduct of the other party or the other party's officers, employees, or agents is void as against the public policy of this state.

(2) A construction contract may contain a provision:

(a) requiring one party to the contract to indemnify, hold harmless, or insure the other party to the contract or the other party's officers, employees, or agents for liability, damages, losses, or costs, including but not limited to reasonable attorney fees, only to the extent that the liability, damages, losses, or costs are caused by the negligence, recklessness, or intentional misconduct of a third party or of the indemnifying party or the indemnifying party's officers, employees, or agents; or

(b) requiring a party to the contract to purchase a project-specific insurance policy, including but not limited to an owner's and contractor's protective insurance, a project management protective liability insurance, or a builder's risk insurance.

(3) This section does not apply to indemnity of a surety by a principal on a construction contract bond or to an insurer's obligation to its insureds.

(4) As used in this section, "construction contract" means an agreement for architectural services, alterations, construction, demolition, design services, development, engineering services, excavation, maintenance, repair, or other improvement to real property, including an agreement to supply labor, materials, or equipment for an improvement to real property.

History: En. Sec. 1, Ch. 259, L. 2007.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

Part 2

Performance, Labor, and Materials Bonds

18-2-201. Security requirements. (1) (a) Except as otherwise provided in 85-1-219 and subsections (3) through (5) of this section, whenever any board, council, commission, trustees, or body acting for the state or any county, municipality, or public body contracts with a person or corporation to do work for the state, county, or municipality or other public body, city, town, or district, the board, council, commission, trustees, or body shall require the person or corporation with whom the contract is made to make, execute, and deliver to the board, council, commission, trustees, or body a good and sufficient bond with a surety company, licensed in this state, as surety, conditioned that the person or corporation shall:

(i) faithfully perform all of the provisions of the contract;

(ii) pay all laborers, mechanics, subcontractors, and material suppliers; and

(iii) pay all persons who supply the person, corporation, or subcontractors with provisions, provender, material, or supplies for performing the work.

(b) The state or other governmental entity listed in subsection (1)(a) may not require that any bond required by subsection (1)(a) be furnished by a particular surety company or by a particular insurance producer for a surety company.

(2) The state or other governmental entity listed in subsection (1)(a) may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency of the following securities in an amount at least equal to the contract sum to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, material suppliers, mechanics, and subcontractors:

(a) lawful money of the United States; or

(b) a cashier's check, certified check, bank money order, certificate of deposit, money market certificate, bank draft, or irrevocable letter of credit, drawn or issued by:

(i) any federally or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation; or

(ii) a credit union insured by the national credit union share insurance fund.

(3) Any board, council, commission, trustee, or body acting for any county, municipality, or public body other than the state may, subject to the provisions of subsection (1)(b), in lieu of a bond from a licensed surety company, accept good and sufficient bond with two or more sureties acceptable to the governmental entity.

(4) Except as provided in subsection (5), the state or other governmental entity may waive the requirements contained in subsections (1) through (3) for building or construction projects, as defined in 18-2-101, that cost less than \$50,000.

(5) A school district may waive the requirements contained in subsections (1) through (3) for building or construction projects, as defined in 18-2-101, that cost less than \$7,500.

History: En. Sec. 1, Ch. 20, L. 1931; re-en. Sec. 5668.41, R.C.M. 1935; R.C.M. 1947, 6-401(part); amd. Sec. 1, Ch. 602, L. 1981; amd. Sec. 1, Ch. 147, L. 1985; amd. Sec. 2, Ch. 498, L. 1985; amd. Sec. 1, Ch. 250, L. 1987; amd. Sec. 59, Ch. 370, L. 1987; amd. Sec. 1, Ch. 236, L. 1993; amd. Sec. 1, Ch. 130, L. 1995; amd. Sec. 4, Ch. 249, L. 1997; amd. Sec. 1, Ch. 112, L. 1999; amd. Sec. 3, Ch. 303, L. 1999; amd. Sec. 2, Ch. 203, L. 2003; amd. Sec. 1, Ch. 186, L. 2005.

18-2-202. Failure to require security — waiver. If any board, council, commission, trustee, or body acting for the state or any board of county commissioners or any mayor and common council of any incorporated city or town or tribunal transacting the business of any such municipal corporation waives or fails to take the security required or authorized by 18-2-201, the state or the county, incorporated city or town, or other municipal corporation is liable to the persons mentioned in 18-2-201 to the full extent and for the full amount of all of the contracted debts by any subcontractor as well as the contractor.

History: En. Sec. 3, Ch. 20, L. 1931; re-en. Sec. 5668.43, R.C.M. 1935; R.C.M. 1947, 6-403; amd. Sec. 2, Ch. 602, L. 1981; amd. Sec. 2, Ch. 250, L. 1987; amd. Sec. 2, Ch. 130, L. 1995.

18-2-203. Amount and terms of security. The security mentioned in 18-2-201 must be in an amount equal to the full contract price agreed to be paid for the work or improvement and must be to the state of Montana, except in cases of cities and towns, in which case the municipality may by general ordinance fix and determine the amount of the security and the name of the secured party, provided that the amount may not be for less than 25% of the contract price of the improvement, and the security may designate that the amount is payable to the city or town and not to the state of Montana.

History: En. Sec. 4, Ch. 20, L. 1931; re-en. Sec. 5668.44, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1941; amd. Sec. 1, Ch. 175, L. 1957; R.C.M. 1947, 6-404(part); amd. Sec. 3, Ch. 130, L. 1995.

18-2-204. Right of action on security — notice. (1) All persons mentioned in 18-2-201 have a right of action in their own name or names on any security furnished under the terms of this part for work done by the laborers or mechanics and for provender, materials, supplies, provisions, or goods supplied and furnished in the work or the making of the improvements. The persons do not have any right of action on the security unless within 90 days after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer, or body acting for the state, county, or municipality or other public body, city, town, or district, the laborer, mechanic or subcontractor, or materialman or person claiming to have supplied provender, materials, provisions, or goods for the prosecution of the work or the making of the improvement presents to and files with the board, council, commission, trustees, or body acting for the state, county, or municipality or other public body, city, town, or district a notice in writing in substance as follows:

“TO (here insert the name of the state, county, or municipality or other public body, city, town, or district):

NOTICE IS HEREBY GIVEN that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or materialman or person claiming to have furnished labor, materials, or provisions for the contract or work) has a claim in the sum of dollars (here insert the amount) against the security taken from (here insert the name of the principal and name of the person providing the security) for the work of (here insert a brief mention or description of the work concerning which the security was taken). (Here to be signed)”

(2) The notice must be signed by the person or corporation making the claim or giving the notice. After being presented and filed, the notice is a public record open to inspection by any person.

History: En. Sec. 4, Ch. 20, L. 1931; re-en. Sec. 5668.44, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1941; amd. Sec. 1, Ch. 175, L. 1957; R.C.M. 1947, 6-404(part); amd. Sec. 4, Ch. 130, L. 1995.

18-2-205. Effect of dealing with subcontractor. A corporation or person performing services or furnishing provender, provisions, supplies, or material to a subcontractor has the same right under the provisions of the security as if the work, services, provender, provisions, supplies, or material was furnished to the original contractor.

History: En. Sec. 1, Ch. 20, L. 1931; re-en. Sec. 5668.41, R.C.M. 1935; R.C.M. 1947, 6-401(part); amd. Sec. 5, Ch. 130, L. 1995.

18-2-206. Notice to contractor concerning subcontractor. (1) A person, firm, or corporation furnishing provender, provisions, materials, or supplies to be used in the construction, performance, carrying on, prosecution, or doing of any work for the state or any county, city, town, district, municipality, or other public body shall, not later than 30 days after the date of the first delivery to a subcontractor or agent of a person, firm, or corporation having a subcontract for the construction, performance, carrying on, prosecution, or doing of the work, give a notice of a right of action on the security.

(2) (a) The notice must be delivered personally or sent by certified mail to the contractor.

(b) The notice must be in writing and state:

(i) that it is a notice of a right of action on the security;

(ii) that the person, firm, or corporation giving the notice has commenced to deliver provender, provisions, materials, or supplies;

(iii) the name of the subcontractor or agent who placed the order or to whom the provender, provisions, materials, or supplies were delivered; and

(iv) that the contractor and the contractor's security will be held for the unpaid price if the supplier is not paid.

(3) To have a right of action against the contractor and the security under this part, a person, firm, or corporation shall give the written notice required by this section in substantially the form described in subsection (2). Any other type of actual or constructive notice is not sufficient.

(4) A suit or action may not be maintained in any court against the contractor or the security to recover for the provender, provisions, materials, or supplies or any part thereof unless the provisions of this part have been complied with.

History: En. Sec. 2, Ch. 20, L. 1931; re-en. Sec. 5668.42, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1967; R.C.M. 1947, 6-402; amd. Sec. 1, Ch. 637, L. 1987; amd. Sec. 6, Ch. 130, L. 1995.

18-2-207. Costs — attorney fees. In a suit or action brought against the surety, payor, or other person liable on the security by a person or corporation to recover for any of the items specified in this part, the prevailing party is entitled to recover, in addition to all other costs, attorney fees in a sum that the court finds reasonable. However, attorney fees may not be allowed in a suit or action brought or instituted before the expiration of 30 days following the date of filing of the notice required in 18-2-206.

History: En. Sec. 4, Ch. 20, L. 1931; re-en. Sec. 5668.44, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1941; amd. Sec. 1, Ch. 175, L. 1957; R.C.M. 1947, 6-404(part); amd. Sec. 7, Ch. 130, L. 1995.

18-2-208. Exceptions. (1) The provisions of this part do not apply to money loaned or advanced to a contractor, subcontractor, or other person in the performance of the work.

(2) A city or town may impose any other or further conditions and obligations in the security that is considered necessary for its proper protection in the fulfillment of the terms of the contract and not in conflict with this part.

(3) The notice required by 18-2-204 to be given within 90 days after completion of the contract and acceptance of the work may not be construed to prevent or delay the payment of money due the contractor under the terms and conditions specified in the contract.

History: (1)En. Sec. 1, Ch. 20, L. 1931; re-en. Sec. 5668.41, R.C.M. 1935; Sec. 6-401, R.C.M. 1947; (2), (3)En. Sec. 4, Ch. 20, L. 1931; re-en. Sec. 5668.44, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1941; amd. Sec. 1, Ch. 175, L. 1957; Sec. 6-404, R.C.M. 1947; R.C.M. 1947, 6-401(part), 6-404(part); amd. Sec. 8, Ch. 130, L. 1995.

Part 3

Contract Requirements and Restrictions

18-2-301. Bids required — advertising. (1) It is unlawful for any offices, departments, institutions, or any agent of the state of Montana acting for or in behalf of the state to do, to cause to be done, or to let any contract for the construction of buildings or the alteration and improvement of buildings and adjacent grounds on behalf of and for the benefit of the state when the amount involved is \$75,000 or more without first advertising in at least one issue each week for 3 consecutive weeks in two newspapers published in the state, one of which must be published at the seat of government and the other in the county where the work is to be performed, calling for sealed bids to perform the work and stating the time and place bids will be considered.

(2) All work may be done, caused to be done, or contracted for only after competitive bidding.

(3) If responsible bids are not received after two attempts, the department or agency may contract for the work in a manner determined to be cost-effective for the state.

(4) This section does not apply to work done by inmates at an institution in the department of corrections.

(5) (a) The provisions of Montana law governing advertising and competitive bidding do not apply when the department of fish, wildlife, and parks is preserving or restoring the historic buildings and resources that it owns at Bannack if:

(i) the options listed in subsection (5)(b) are determined to be more cost-effective for the state; and

(ii) the implementation of the options listed in subsection (5)(b) is necessary to save historic buildings and resources from degradation and loss.

(b) For the preservation or restoration of historic buildings and resources at Bannack when the conditions listed in subsection (5)(a) are met, the department of fish, wildlife, and parks may accomplish the preservation or restoration through:

(i) a memorandum of understanding with a local, state, or federal entity or nonprofit organization when the entity or organization demonstrates the competence, knowledge, and qualifications to preserve or restore historic resources;

(ii) the use of qualified and trained department of fish, wildlife, and parks employees and volunteers;

(iii) a training program in historic preservation and restoration conducted by a qualified local, state, or federal entity or a qualified nonprofit organization; or

(iv) any combination of the options described in subsection (5)(b).

History: (1) thru (3) En. Sec. 1, Ch. 149, L. 1927; re-en. Sec. 259.1, R.C.M. 1935; amd. Sec. 1, Ch. 142, L. 1961; amd. Sec. 1, Ch. 97, L. 1977; Sec. 82-1131, R.C.M. 1947; (4) En. Sec. 2, Ch. 142, L. 1961; amd. Sec. 92, Ch. 199, L. 1965; amd. Sec. 54, Ch. 326, L. 1974; Sec. 82-1131.1, R.C.M. 1947; R.C.M. 1947, 82-1131, 82-1131.1; amd. Sec. 2, Ch. 16, L. 1979; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 6, Ch. 518, L. 1993; amd. Sec. 61, Ch. 546, L. 1995; amd. Sec. 1, Ch. 57, L. 1997; amd. Sec. 5, Ch. 249, L. 1997.

18-2-302. Bid security — waiver — authority to submit. (1) (a) Except as provided in subsection (2), each bid must be accompanied by bid security in the amount of 10% of the bid. The security may consist of cash, a cashier's check, a certified check, a bank money order, a certificate of deposit, a money market certificate, or a bank draft. The security must be:

(i) drawn and issued by a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation;

(ii) drawn and issued by a credit union insured by the national credit union share insurance fund; or

(iii) a bid bond or bonds executed by a surety company authorized to do business in the state of Montana.

(b) The state or other governmental entity may not require that a bid bond or bond provided for in subsection (1)(a)(iii) be furnished by a particular surety company or by a particular insurance producer for a surety company.

(2) The state or other governmental entity may waive the requirements for bid security on building or construction projects, as defined in 18-2-101, that cost less than \$25,000.

(3) The bid security must be signed by an individual authorized to submit the security by the corporation or other business entity on whose behalf the security is submitted. If the request for bid or other specifications provided by the state or other governmental entity specify the form or content of the bid security, the security submitted must comply with the requirements of that specification.

History: En. Sec. 3, Ch. 149, L. 1927; re-en. Sec. 259.3, R.C.M. 1935; amd. Sec. 2, Ch. 193, L. 1977; amd. Sec. 1, Ch. 487, L. 1977; R.C.M. 1947, 82-1133; amd. Sec. 3, Ch. 250, L. 1987; amd. Sec. 9, Ch. 130, L. 1995; amd. Sec. 6, Ch. 249, L. 1997; amd. Sec. 1, Ch. 282, L. 1999; amd. Sec. 3, Ch. 203, L. 2003.

18-2-303. Construction bids — minimum requirements — effect of failure to comply. (1) Each bid communicated to a state agency for the construction of a building must contain or be accompanied by the following items that may not be waived by the state agency:

- (a) bid security, as required by 18-2-302;
- (b) the unit price for each item required to be bid by unit price; and
- (c) the signature of an individual authorized to submit the bid and authorized by that submission to agree to perform the contract if the bid is accepted. If the request for bid or other specifications provided by the state agency specify the individual required to submit the bid, the bid must comply with that requirement.

(2) The unit price must be expressly stated in the bid and may not have to be calculated by the state agency by dividing the total of the unit prices by the number of units specified or required.

(3) A bid that does not include the items required by subsection (1) as part of or along with the bid may not be accepted by the state agency.

(4) The following definitions apply to this section:

- (a) “Building” has the meaning provided in 18-2-101.
- (b) “Construction” has the meaning provided in 18-2-101.
- (c) “State agency” means a department, board, commission, authority, or office of a branch of state government, including the board of regents and the Montana university system.
- (d) “Unit price” means the price of lumber, concrete, earth, pipe, or other construction item, activity, or material for which the price is required by the request for bids to be bid on the basis of that item, a linear foot, square foot, square yard, cubic yard, activity an hour or other measurement of time, or other standard unit of measurement for that material, item, or activity.

History: En. Sec. 2, Ch. 282, L. 1999.

18-2-304 and 18-2-305 reserved.

18-2-306. Time of final acceptance and final payment on construction contracts — interest. (1) A government entity that enters into a contract for the construction of a building shall, unless otherwise provided by law or the contract and within 10 days after a request by the construction contractor for final acceptance, decide whether or not to make final acceptance. Within 30 days after final acceptance by the government entity, the government entity shall make the final payment of the contract price specified in the contract to the other party to the contract.

(2) Except as provided by law or the contract, a government entity that fails to complete the payment of the contract price at the time required by subsection (1) shall pay to the other party to the contract interest at the rate specified in 17-8-242 or 18-1-404, as applicable. Collection of interest pursuant to this section does not preclude any other legal remedy.

(3) The following definitions apply to this section:

- (a) “Building” has the meaning provided in 18-2-101.
- (b) “Construction” has the meaning provided in 18-2-101.
- (c) “Final acceptance” means the government entity’s acceptance of the construction of a building by the contractor upon certification by the architect, project engineer, or other representative of the government entity of final completion of the building.

(d) “Final completion” means that the building has been completed in accordance with the terms and conditions of the contract documents.

(e) “Government entity” means a department, agency, commission, board, authority, institution, or office of the state, including the board of regents and the Montana university

system, a municipality, county, consolidated municipal-county government, school district, or other special district.

History: En. Sec. 1, Ch. 439, L. 1999; amd. Sec. 13, Ch. 181, L. 2001.

18-2-307 through 18-2-310 reserved.

18-2-311. Repealed. Sec. 3, Ch. 87, L. 1985.

History: En. Sec. 1, Ch. 141, L. 1967; R.C.M. 1947, 82-1927.

18-2-312. Excusable delays. A public contractor shall not be considered to be working beyond contract time if the delay is caused by an accident or casualty produced by physical cause which is not preventable by human foresight, i.e., any of the misadventures termed an “act of God”.

History: En. Sec. 2, Ch. 141, L. 1967; R.C.M. 1947, 82-1928.

18-2-313. Contract provisions necessary for federal funds. In all contracts let for state, county, municipal, and school construction, repair, or maintenance work under any of the laws of this state when the funds for the projects are supplied in whole or in part from funds of the United States government, it is lawful to insert in each of the contracts any provisions that are or will be necessary to have such contract conform to any federal statutes or regulation under which such funds are supplied.

History: En. Sec. 1, Ch. 43, Ex. L. 1933; re-en. Sec. 269.1, R.C.M. 1935; amd. Sec. 2, Ch. 97, L. 1977; R.C.M. 1947, 82-1147.

18-2-314. Cost-plus system invalid. Any contracts made by, on behalf of, or for the state of Montana which shall directly or indirectly recognize the cost-plus system or principle shall be void and of no effect and this section shall stand as a notice of the invalidity of any such contract.

History: En. Sec. 5, Ch. 149, L. 1927; re-en. Sec. 259.5, R.C.M. 1935; R.C.M. 1947, 82-1135.

18-2-315. State purchasing not affected. Nothing contained in 18-2-301, 18-2-302, or 18-2-314 alters, modifies, or changes the laws providing for or relating to department of administration functions relating to state purchasing.

History: En. Sec. 6, Ch. 149, L. 1927; re-en. Sec. 259.6, R.C.M. 1935; amd. Sec. 55, Ch. 326, L. 1974; R.C.M. 1947, 82-1136.

18-2-316. Limit on retainage for public contracts. (1) The maximum retainage applied to construction contracts administered by the state of Montana or any department, agency, or political subdivision of the state of Montana, by any county, municipality, or political subdivision of a county or municipality, or by a school district may not exceed 5% if the contractor is performing by the terms of the contract.

(2) The retainage percentage withheld by a government entity, as provided for in subsection (1), from a contractor is the maximum retainage percentage that a contractor may withhold from a subcontractor.

(3) For the purposes for this section, “retainage” means the ratio, in percent, of funds retained to the total amount to be paid to the contractor by the government entity.

History: En. Sec. 2, Ch. 222, L. 1999.

Part 4

Special Conditions — Labor

18-2-401. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) A “bona fide resident of Montana” is a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person’s past habitation in this state has been coupled with an intention to make it the person’s home. Persons who come to Montana solely in pursuance of any contract or agreement to perform labor may not be considered to be bona fide residents of Montana within the meaning and for the purpose of this part.

(2) “Commissioner” means the commissioner of labor and industry provided for in 2-15-1701.

(3) (a) “Construction services” means work performed by an individual in construction, heavy construction, highway construction, and remodeling work.

(b) The term does not include:

(i) engineering, superintendence, management, office, or clerical work on a public works contract; or

(ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law.

(4) "Contractor" means any general contractor, subcontractor, firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in construction services.

(5) "Department" means the department of labor and industry provided for in 2-15-1701.

(6) "District" means a prevailing wage rate district established as provided in 18-2-411.

(7) "Employer" means any firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in nonconstruction services.

(8) "Heavy and highway construction wage rates" means wage rates, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor and zone pay and travel allowance that are determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, utility rights-of-way, staging yards located on or off the right-of-way, or new or reopened pits that produce aggregate, asphalt, concrete, or backfill when the pit does not normally sell to the general public.

(9) "Nonconstruction services" means work performed by an individual, not including management, office, or clerical work, for:

(a) the maintenance of publicly owned buildings and facilities, including public highways, roads, streets, and alleys;

(b) custodial or security services for publicly owned buildings and facilities;

(c) grounds maintenance for publicly owned property;

(d) the operation of public drinking water supply, waste collection, and waste disposal systems;

(e) law enforcement, including janitors and prison guards;

(f) fire protection;

(g) public or school transportation driving;

(h) nursing, nurse's aid services, and medical laboratory technician services;

(i) material and mail handling;

(j) food service and cooking;

(k) motor vehicle and construction equipment repair and servicing; and

(l) appliance and office machine repair and servicing.

(10) "Project location" means the construction site where a public works project involving construction services is being built, installed, or otherwise improved or reclaimed, as specified on the project plans and specifications.

(11) (a) "Public works contract" means a contract for construction services let by the state, county, municipality, school district, or political subdivision or for nonconstruction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of \$25,000. The nonconstruction services classification does not apply to any school district that at any time prior to April 27, 1999, contracted with a private contractor for the provision of nonconstruction services on behalf of the district.

(b) The term does not include contracts entered into by the department of public health and human services for the provision of human services.

(12) "Special circumstances" means all work performed at a facility that is built or developed for a specific Montana public works project and that is located in a prevailing wage district that contains the project location or that is located in a contiguous prevailing wage district.

(13) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

(i) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or

(ii) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the

Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages must be computed by the department based on work performed by electrical contractors who are licensed under Title 37, chapter 68, master plumbers who are licensed under Title 37, chapter 69, part 3, and Montana contractors who are registered under Title 39, chapter 9, and whose work is performed according to commercial building codes. The contractor survey must include information pertaining to the number of skilled craftspersons employed in the employer's peak month of employment and the wages and benefits paid for each craft. In setting the prevailing wages from the survey for each craft, the department shall use the weighted average wage for each craft, except in those cases in which the survey shows that 50% of the craftspersons are receiving the same wage. When the survey shows that 50% of the craftspersons are receiving the same wage, that wage is the prevailing wage for that craft. The work performed must be work of a similar character to the work performed in the district unless the annual survey of construction contractors and the biennial survey of nonconstruction service employers in the district does not generate sufficient data. If the survey produces insufficient data, the rate may be established by the use of other information or methods that the commissioner determines fairly establish the standard prevailing rate of wages. The commissioner shall establish by rule the method or methods by which the standard prevailing rate of wages is determined. The rules must establish a process for determining if there is insufficient data generated by the survey of employers in the district that requires the use of other methods of determining the standard prevailing rate of wages. The rules must identify the amount of data that constitutes insufficient data and require the commissioner of labor to use other methods of determining the standard prevailing rate of wages when insufficient data exists. The alternative methods of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character that is conducted as near as possible to the original district.

(b) When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and the rate of travel allowance must be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract.

(14) "Work of a similar character" means work on private commercial projects as well as work on public projects.

History: (1), (4) En. Sec. 2, Ch. 102, L. 1931; re-en. Sec. 3043.2, R.C.M. 1935; Sec. 41-702, R.C.M. 1947; (2), (3) En. Sec. 1, Ch. 139, L. 1981; (5) En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; Sec. 41-701, R.C.M. 1947; R.C.M. 1947, 41-701(part), 41-702; amd. Sec. 1, Ch. 139, L. 1981; amd. Sec. 2, Ch. 561, L. 1987; amd. Sec. 2, Ch. 609, L. 1993; amd. Sec. 1, Ch. 522, L. 1997; amd. Sec. 1, Ch. 30, L. 1999; amd. Sec. 1, Ch. 289, L. 1999; amd. Sec. 1, Ch. 496, L. 1999; amd. Sec. 1, Ch. 517, L. 2001; amd. Sec. 1, Ch. 293, L. 2003.

18-2-402. Standard prevailing rate of wages. (1) The Montana commissioner of labor may determine the standard prevailing rate of wages applicable to public works contracts under this part. The commissioner shall undertake to keep and maintain copies of collective bargaining agreements and other information on which the rates are based.

(2) The provisions of this part do not apply in those instances where the standard prevailing rate of wages is determined pursuant to federal law.

(3) In no instances where this part is applicable shall the standard prevailing rate of wage be determined to be greater than the applicable rate of wage in the area for the particular work in question as negotiated under existing and current collective bargaining agreements.

History: En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; R.C.M. 1947, 41-701(1), (4), (5); amd. Sec. 3, Ch. 561, L. 1987.

18-2-403. Preference of Montana labor in public works — wages — tax-exempt project — federal exception. (1) In every public works contract, there must be inserted in the

bid specification and the public works contract a provision requiring the contractor to give preference to the employment of bona fide residents of Montana in the performance of the work.

(2) All public works contracts for construction services under subsection (1), except those for heavy and highway construction, that are conducted at the project location or under special circumstances must contain a provision requiring the contractor to pay:

(a) the travel allowance that is in effect and applicable to the district in which the work is being performed; and

(b) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that:

(i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor; and

(ii) is in effect and applicable to the district in which the work is being performed.

(3) In every public works contract for heavy and highway construction, there must be inserted a provision to require the contractor to pay the heavy and highway construction wage rates established statewide for heavy and highway construction services conducted at the project location or under special circumstances.

(4) Except as provided in subsection (5), all public works contracts for nonconstruction services under subsection (1) must contain a provision requiring the contractor to pay:

(a) the travel allowance that is in effect and applicable to the district in which the work is being performed; and

(b) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that:

(i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor; and

(ii) is in effect and applicable to the district in which the work is being performed.

(5) An employer who, as a nonprofit organization providing individuals with vocational rehabilitation, performs a public works contract for nonconstruction services and who employs an individual whose earning capacity is impaired by a mental, emotional, or physical disability may pay the individual wages that are less than the standard prevailing wage if the employer complies with the provisions of section 214(c) of the Fair Labor Standards Act of 1938, 29 U.S.C. 214 and 29 CFR, part 525, and the wages paid are equal to or above the minimum wage required in 39-3-404.

(6) Transportation of goods, supplies, materials, and manufactured or fabricated items to or from the project location is not subject to payment of the standard prevailing rate of wages.

(7) A contract, other than a public works contract, let for a project costing more than \$25,000 and financed from the proceeds of bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7, must contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(8) A public works contract may not be let to any person, firm, association, or corporation refusing to execute an agreement with the provisions described in subsections (1) through (7) in it, provided that in public works contracts involving the expenditure of federal-aid funds, this part may not be enforced in a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

(9) Failure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from the contractor's obligation to pay the standard prevailing wage rate and places the obligation on the public contracting agency.

History: En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; R.C.M. 1947, 41-701(part); amd. Sec. 2, Ch. 58, L. 1979; amd. Sec. 2, Ch. 139, L. 1981; amd. Sec. 4, Ch. 561, L. 1987; (4) En. Sec. 1, Ch. 420, L. 1991; amd. Sec. 3, Ch. 464, L. 1993; amd. Sec. 3, Ch. 609, L. 1993; amd. Sec. 2, Ch. 522, L. 1997; amd. Sec. 2, Ch. 289, L. 1999; amd. Sec. 1, Ch. 467, L. 2003.

18-2-404. Approval of public works contract — bond. (1) All public works contracts under this part must be approved in writing by the legal adviser of the contracting county, municipal corporation, school district, assessment district, or special improvement district body or officer prior to execution by the contracting public officer or officers.

(2) In all public works contracts entered into under the provisions of this part, at least \$1,000 of the contract price must be withheld at all times until the termination of the public works contract.

History: (1)En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; Sec. 41-701, R.C.M. 1947; (2)En. Sec. 3, Ch. 102, L. 1931; re-en. Sec. 3043.3, R.C.M. 1935; amd. Sec. 2, Ch. 43, L. 1961; Sec. 41-703, R.C.M. 1947; R.C.M. 1947, 41-701(part), 41-703(part); amd. Sec. 3, Ch. 522, L. 1997.

18-2-405. Repealed. Sec. 8, Ch. 609, L. 1993.

History: En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; R.C.M. 1947, 41-701(part).

18-2-406. Posting wage scale and fringe benefits. The contractor performing work or providing construction services under public works contracts, as provided in this part, shall post in a prominent and accessible site on the project or staging area, not later than the first day of work and continuing for the entire duration of the project, a legible statement of all wages and fringe benefits to be paid to the employees.

History: En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; R.C.M. 1947, 41-701(2); amd. Sec. 2, Ch. 517, L. 2001.

18-2-407. Forfeiture for failure to pay standard prevailing wage. (1) Except as provided in 18-2-403, a contractor, subcontractor, or employer who pays workers or employees at less than the standard prevailing wage as established under the public works contract shall forfeit to the department a penalty at a rate of up to 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected by the department under this section must be deposited in the general fund. A contractor, subcontractor, or employer shall also forfeit to the employee the amount of wages owed plus \$25 a day for each day that the employee was underpaid.

(2) Whenever it appears to the contracting agency or to the Montana commissioner of labor and industry that there is insufficient money due to the contractor or the employer under the terms of the contract to cover penalties, the Montana commissioner of labor and industry may, within 90 days after the filing of notice of completion of the project and its acceptance by the contracting agency, maintain an action in district court to recover all penalties and forfeitures due. This part does not prevent the individual worker who has been underpaid or the commissioner of labor and industry on behalf of all the underpaid workers from maintaining an action for recovery of the wages due under the contract as provided in Title 39, chapter 3, part 2, except that appeal of the hearings officer's decision is made directly to district court rather than to the board of personnel appeals.

History: En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; R.C.M. 1947, 41-701(3); amd. Sec. 5, Ch. 554, L. 1989; amd. Sec. 4, Ch. 609, L. 1993; amd. Sec. 4, Ch. 90, L. 1995; amd. Sec. 13, Ch. 389, L. 1999; amd. Sec. 2, Ch. 467, L. 2003.

18-2-408. Renumbered 18-2-432. Code Commissioner, 1985.

18-2-409. Montana residents to be employed on state construction contracts. (1) On any state construction project funded by state or federal funds, except a project partially funded with federal aid money from the United States department of transportation or when residency preference laws are specifically prohibited by federal law and to which the state is a signatory to the construction contract, each contractor shall ensure that at least 50% of the contractor's workers performing labor on the project are bona fide Montana residents, as defined in 18-2-401.

(2) For any contract awarded for a state construction project, except a project partially funded with federal aid money from the United States department of transportation or when residency preference laws are specifically prohibited by federal law, there must be inserted in

the bid specification and the contract a provision, in language approved by the commissioner of labor and industry, implementing the requirements of subsection (1). The bid specification and the contract must provide that at least 50% of the workers on the project will be bona fide Montana residents. If due to a lack of qualified personnel each contractor cannot guarantee that at least 50% of the contractor's workers on the project will be Montana residents, the contract must provide that the percentage that the commissioner of labor and industry believes possible will be Montana residents.

(3) The commissioner of labor and industry shall enforce this section and investigate complaints of its violation and may adopt rules to implement this section.

History: En. Sec. 1, Ch. 549, L. 1985; amd. Sec. 1, Ch. 564, L. 2003.

18-2-410 reserved.

18-2-411. Creation of prevailing wage rate districts. (1) Without taking into consideration heavy and highway construction wage rates, the commissioner shall divide the state into at least 10 prevailing wage rate districts.

(2) In initially determining the districts, the commissioner must:

- (a) follow the rulemaking procedures in the Montana Administrative Procedure Act; and
- (b) publish the reasons supporting the creation of each district.

(3) A district boundary may not be changed except for good cause and in accordance with the rulemaking procedures in the Montana Administrative Procedure Act.

(4) The presence of collective bargaining agreements in a particular area may not be the sole basis for the creation of boundaries of a district, nor may the absence of collective bargaining agreements in a particular area be the sole basis for changing the boundaries of a district.

(5) For each prevailing wage rate district established under this section, the commissioner shall determine the standard prevailing rate of wages to be paid employees, as provided in 18-2-401 and 18-2-402. The standard prevailing rate of wages for construction services, as determined by the commissioner in this subsection, must be used for calculating an apprentice's wage, as provided in 39-6-108.

History: En. Sec. 1, Ch. 561, L. 1987; amd. Sec. 5, Ch. 609, L. 1993; amd. Sec. 2, Ch. 538, L. 2005.

18-2-412. Method for payment of standard prevailing wage. (1) To fulfill the obligation to pay the standard prevailing rate of wages under 18-2-403, a contractor or subcontractor may:

(a) pay the amount of fringe benefits and the basic hourly rate of pay that is part of the standard prevailing rate of wages directly to the worker or employee in cash;

(b) make an irrevocable contribution to a trustee or a third person pursuant to a fringe benefit fund, plan, or program that meets the requirements of the Employee Retirement Income Security Act of 1974 or that is a bona fide program approved by the United States department of labor; or

(c) make payments using any combination of methods set forth in subsections (1)(a) and (1)(b) so that the aggregate of payments and contributions is not less than the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions that meet the requirements of the Employee Retirement Income Security Act of 1974, travel, or other bona fide programs approved by the United States department of labor, that is applicable to the district for the particular type of work being performed.

(2) The fringe benefit fund, plan, or program described in subsection (1)(b) must provide benefits to workers or employees for health care, pensions on retirement or death, life insurance, disability and sickness insurance, or bona fide programs that meet the requirements of the Employee Retirement Income Security Act of 1974 or that are approved by the United States department of labor.

(3) A private contractor or subcontractor shall file a copy of the fringe benefit fund, plan, or program described in subsection (2) with the department.

History: En. Sec. 1, Ch. 609, L. 1993.

18-2-413 through 18-2-420 reserved.

18-2-421. Notice. When a public works project is accepted by the public contracting agency, a notice of acceptance and the completion date of the project must be sent to the

department. However, in the case of public works contracts that amount to \$50,000 or less in cost, the notice of acceptance and the completion date of the project is not required unless the department requests that information. The 90-day limitation for filing an action in district court, as provided in 18-2-407, does not begin until the public contracting agency notifies the department of its acceptance of the public works project.

History: En. Sec. 3, Ch. 139, L. 1981; amd. Sec. 4, Ch. 522, L. 1997.

18-2-422. Bid specification and public works contract to contain standard prevailing wage rate and payroll record notification. All public works contracts and the bid specifications for those contracts must contain:

(1) a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, that the contractors and employers shall pay during construction of the project;

(2) a provision requiring each contractor and employer to maintain payroll records in a manner readily capable of being certified for submission under 18-2-423, for not less than 3 years after the contractor's or employer's completion of work on the project; and

(3) a provision requiring each contractor to post a statement of all wages and fringe benefits in compliance with 18-2-423.

History: En. Sec. 4, Ch. 139, L. 1981; amd. Sec. 5, Ch. 522, L. 1997; amd. Sec. 3, Ch. 517, L. 2001.

18-2-423. Submission of payroll records. If a complaint is filed with the department alleging noncompliance with 18-2-422, the department may require the project to submit to it certified copies of the payroll records for workers employed on that project. A contractor or a subcontractor shall pay employees receiving an hourly wage on a weekly basis. If a wage violation complaint is filed with the department, the contractor or subcontractor shall provide the employee's payroll records to the department within 5 days of receiving the payroll request from the department.

History: En. Sec. 5, Ch. 139, L. 1981; amd. Sec. 6, Ch. 609, L. 1993.

18-2-424. Enforcement. If a contractor or a subcontractor refuses to submit payroll records requested by the department pursuant to 18-2-423, the commissioner or his authorized representative may issue subpoenas compelling the production of those records.

History: En. Sec. 6, Ch. 139, L. 1981.

18-2-425. Prohibition — project labor agreement. (1) Except as otherwise provided in this chapter, the state or any political subdivision that contracts for the construction, maintenance, repair, or improvement of public works may not require that a contractor, subcontractor, or material supplier or carrier engaged in the construction, maintenance, repair, or improvement of public works execute or otherwise become a party to any project labor agreement, collective bargaining agreement, prehire agreement, or other agreement with employees, their representatives, or any labor organization as a condition of bidding, negotiating, being awarded, or performing work on a public works contract.

(2) For the purposes of this section, "public works" means:

(a) a building, road, street, sewer, storm drain, water system, irrigation system, reclamation project, or other facility owned or to be contracted for by the state or a political subdivision and that is paid for in whole or in part with tax revenue paid by residents of the state; or

(b) any other construction service or nonconstruction service as defined in 18-2-401.

History: En. Sec. 1, Ch. 540, L. 1999.

18-2-426 through 18-2-430 reserved.

18-2-431. Rulemaking authority. The commissioner may adopt rules necessary to implement this part.

History: En. Sec. 1, Ch. 234, L. 1985.

18-2-432. Penalty for violation. (1) (a) If a person, firm, or corporation fails to comply with the provisions of this part, the state, county, municipality, school district, or officer of a political subdivision that executed the public works contract shall retain \$1,000 of the contract price as liquidated damages for the violation of the terms of the public works contract, and the

money must be credited to the proper funds of the state, county, municipality, school district, or political subdivision.

(b) If a person, firm, or corporation fails to comply with the provisions of this part due to gross negligence, as determined by the commissioner, the commissioner may retain up to an additional \$10,000 above the amount provided for in subsection (1)(a) as a penalty for the violation of the terms of the public works contract. The money retained pursuant to this subsection (1)(b) must be credited to the proper funds of the state, county, municipality, school district, or other political subdivision.

(2) Whenever a contractor or subcontractor is found by the commissioner to have aggravatedly or willfully violated the labor standards provisions of this chapter, the contractor or subcontractor or any firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial interest is ineligible, for a period not to exceed 3 years after the date of the final judgment, to receive any public works contracts or subcontracts that are subject to the provisions of this chapter.

(3) Whenever an action has been instituted in a district court in this state against any person, firm, or corporation for the violation of this part, the court in which the action is pending is authorized to issue an injunction to restrain the person, firm, or corporation from proceeding with a public works contract with the state, county, municipality, school district, or political subdivision, pending the final determination of the instituted action.

History: En. Sec. 3, Ch. 102, L. 1931; re-en. Sec. 3043.3, R.C.M. 1935; amd. Sec. 2, Ch. 43, L. 1961; R.C.M. 1947, 41-703(part); Sec. 18-2-408, MCA 1983; redes. 18-2-432 by Code Commissioner, 1985; amd. Sec. 7, Ch. 609, L. 1993; amd. Sec. 6, Ch. 522, L. 1997; amd. Sec. 1, Ch. 78, L. 1999.

Part 5 Alternative Project Delivery Contracts

18-2-501. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) “Alternative project delivery contract” means a construction management contract, a general contractor construction management contract, or a design-build contract.

(2) “Construction management contract” means a contract in which the contractor acts as the public owner’s construction manager and provides leadership and administration for the project, from planning and design, in cooperation with the designers and the project owners, to project startup and construction completion.

(3) “Contractor” has the meaning provided in 18-4-123.

(4) “Design-build contract” means a contract in which the designer-builder assumes the responsibility and the risk for architectural or engineering design and construction delivery under a single contract with the owner.

(5) “General contractor construction management contract” means a contract in which the general contractor, in addition to providing the preconstruction, budgeting, and scheduling services, procures necessary construction services, equipment, supplies, and materials through competitive bidding contracts with subcontractors and suppliers to construct the project.

(6) “Governing body” means the legislative authority of:

(a) a municipality, county, or consolidated city-county established pursuant to Title 7, chapter 1, 2, or 3;

(b) a school district established pursuant to Title 20; or

(c) an airport authority established pursuant to Title 67, chapter 11.

(7) “Project” means any construction or any improvement of the land, a building, or another improvement that is suitable for use as a state or local governmental facility.

(8) “Publish” means publication of notice as provided for in 7-1-2121, 7-1-4127, 18-2-301, and 20-9-204.

(9) “State agency” has the meaning provided in 2-2-102, except that the department of transportation, provided for in 2-15-2501, is not considered a state agency.

History: En. Sec. 1, Ch. 574, L. 2005.

18-2-502. Alternative project delivery contract — authority — criteria. (1) Subject to the provisions of this part, a state agency or a governing body may use an alternative project

delivery contract. A state agency or governing body that uses an alternative project delivery contract shall:

- (a) demonstrate that the state agency or the governing body has or will have knowledgeable staff or consultants who have the capacity to manage an alternative project delivery contract;
- (b) clearly describe the manner in which:
 - (i) the alternative project delivery contract award process will be conducted; and
 - (ii) subcontractors and suppliers will be selected.

(2) Prior to awarding an alternative project delivery contract, the state agency or the governing body shall determine that the proposal meets at least two of the sets of criteria described in subsections (2)(a) through (2)(c) and the provisions of subsection (3). To make the determination, the state agency or the governing body shall make a detailed written finding that:

(a) the project has significant schedule ramifications and using the alternative project delivery contract is necessary to meet critical deadlines by shortening the duration of construction. Factors that the state agency or the governing body may consider in making its findings include, but are not limited to:

- (i) operational and financial data that show significant savings or increased opportunities for generating revenue as a result of early project completion;
- (ii) demonstrable public benefits that result from less time for construction; or
- (iii) less or a shorter duration of disruption to the public facility.

(b) by using an alternative project delivery contract, the design process will contribute to significant cost savings. Significant cost savings that may justify an alternative project delivery contract may derive from but are not limited to value engineering, building systems analysis, life cycle analysis, and construction planning.

(c) the project presents significant technical complexities that necessitate the use of an alternative delivery project contract.

(3) The state agency or the governing body shall make a detailed written finding that using an alternative project delivery contract will not:

- (a) encourage favoritism or bias in awarding the contract; or
- (b) substantially diminish competition for the contract.

History: En. Sec. 2, Ch. 574, L. 2005.

18-2-503. Alternative project delivery contract — award criteria. (1) (a) Whenever a state agency or a governing body determines, pursuant to 18-2-502, that an alternative project delivery contract is justifiable, the state agency or the governing body shall publish a request for qualifications.

(b) After evaluating the responses to the request for qualifications, a request for proposals must be sent to each respondent that meets the qualification criteria specified in the request for qualifications. The request for proposals must clearly describe the project, the state agency's or the governing body's needs with respect to the project, the requirements for submitting a proposal, criteria that will be used to evaluate proposals, and any other factors, including any weighting, that will be used to award the alternative project delivery contract.

(2) The state agency's or the governing body's decision to award an alternative project delivery contract must be based, at a minimum, on:

- (a) the applicant's:
 - (i) history and experience with projects similar to the project under consideration;
 - (ii) financial health;
 - (iii) staff or workforce that is proposed to be committed to the project;
 - (iv) approach to the project; and
 - (v) project costs; and
- (b) any additional criteria or factors that reflect the project's characteristics, complexities, or goals.

(3) Under any contract awarded pursuant to this part, architectural services must be performed by an architect, as defined in 37-65-102, and engineering services must be performed by a professional engineer, as defined in 37-67-101.

(4) At the conclusion of the selection process, the state agency or the governing body shall state and document in writing the reasons for selecting the contractor that was awarded the contract. The documentation must be provided to all applicants and to anyone else, upon request.

(5) A state agency or the governing body may compensate unsuccessful applicants for costs incurred in developing and submitting a proposal, provided that all unsuccessful applicants are treated equitably.

History: En. Sec. 3, Ch. 574, L. 2005.

CHAPTER 4 MONTANA PROCUREMENT ACT

Part 1 General Provisions

18-4-121. Short title. This chapter may be cited as the “Montana Procurement Act”.

History: En. Sec. 1, Ch. 519, L. 1983.

18-4-122. Purpose. The underlying purposes and policies of this chapter are to:

(1) simplify, clarify, and modernize the law governing procurement by the state of Montana;

(2) permit the continued development of procurement policies and practices;

(3) make as consistent as possible the procurement laws among the various jurisdictions;

(4) provide for increased public confidence in the procedures followed in public procurement;

(5) ensure the fair and equitable treatment of all persons who deal with the procurement system of the state;

(6) provide increased economy in state procurement activities and maximize to the fullest extent practicable the purchasing value of public funds of the state;

(7) foster effective, broad-based competition within the free enterprise system;

(8) provide safeguards for the maintenance of a procurement system of quality and integrity; and

(9) provide the exclusive remedies for unlawful bid solicitations or contract awards.

History: En. Sec. 2, Ch. 519, L. 1983; amd. Sec. 2, Ch. 443, L. 1997.

18-4-123. Definitions. In this chapter, unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

(1) “Business” means a corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity.

(2) “Change order” means a written order, signed by an authorized department representative, directing the contractor to make changes that the changes clause of the contract authorizes the department to order without the consent of the contractor.

(3) “Contract” means all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies or services.

(4) “Contract modification” means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract accomplished by mutual action of the parties to the contract.

(5) “Contractor” means a person having a contract with a governmental body.

(6) “Data” means recorded information, regardless of form or characteristic.

(7) “Department” means the department of administration.

(8) “Designee” means an authorized representative of a person holding a superior position.

(9) “Director” means the director of the department of administration.

(10) “Employee” means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for a governmental body.

(11) “Governmental body” means a department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other entity,

instrumentality, or official of the executive, legislative, or judicial branch of this state, including the board of regents and the Montana university system.

(12) (a) "Grant" means the furnishing by the federal government of assistance, whether financial or otherwise, to a person or agency to support a program authorized by law.

(b) Grant does not include an award whose primary purpose is to procure an end product, whether in the form of supplies or services. A contract resulting from an award is not a grant but a procurement contract.

(13) "Person" means any business, individual, union, committee, club, other organization, or group of individuals.

(14) (a) "Printing" means the reproduction of an image from a printing surface generally made by a contact impression that causes a transfer of ink or the reproduction of an impression by a photographic process and includes graphic arts, typesetting, binding, and other operations necessary to produce a finished printed product.

(b) Printing does not include rebinding or repair by a library or an office, department, board, or commission of books, journals, pamphlets, magazines, and literary articles held as a part of its library collection.

(15) (a) "Procurement" means acquisition with or without cost, buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. The term includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(b) Procurement does not include the acquiring of supplies or services by gift.

(16) "Procurement officer" means any person authorized to enter into and administer contracts and make written determinations with respect to contracts. The term includes an authorized representative acting within the limits of the representative's authority.

(17) "Purchasing agency" means any governmental body, other than the department, that is authorized by this chapter or its implementing rules or by way of delegation from the director to enter into contracts.

(18) (a) "Services" means the furnishing of labor, time, or effort by a contractor.

(b) Services does not include employment agreements or collective bargaining agreements, the provision of human services administered by the department of public health and human services, or services related to construction contracts.

(19) "Supplies" means all property except as otherwise provided by law, including but not limited to equipment, materials, printing, and commodities, and excluding land or any interest in land.

(20) "Using agency" means any governmental body of the state that uses any supplies or services procured under this chapter.

(21) "Vendor" means a person who offers or may offer supplies or services to a public agency.

History: En. Sec. 3, Ch. 519, L. 1983; amd. Sec. 3, Ch. 443, L. 1997; amd. Sec. 14, Ch. 181, L. 2001.

18-4-124. Local government adoption of procurement provisions — alternative project delivery contracts. (1) A political subdivision or school district may adopt any or all parts of this chapter and the accompanying rules promulgated by the department.

(2) A governing body, as defined in 18-2-501, may adopt the provisions of Title 18, chapter 2, part 5, and use an alternative project delivery contract.

History: En. Sec. 45, Ch. 519, L. 1983; amd. Sec. 8, Ch. 574, L. 2005.

18-4-125. Collection of data concerning public procurement. All using agencies shall cooperate with the department in the preparation of statistical data concerning the procurement, usage, and disposition of all supplies and services, and the department may employ trained personnel as necessary to carry out this function. All using agencies shall furnish such reports as the department may require concerning usage, needs, and stocks on hand, and the department may prescribe forms to be used by the using agencies in requisitioning, ordering, and reporting of supplies and services.

History: En. Sec. 11, Ch. 519, L. 1983.

18-4-126. Public access to procurement information — records — retention. (1) Procurement information is a public writing and must be available to the public as provided in 2-6-102, 18-4-303, and 18-4-304.

(2) All procurement records must be retained, managed, and disposed of in accordance with the state records management program, Title 2, chapter 6.

(3) Written determinations required by this chapter must be retained in the appropriate official contract file of the department or the purchasing agency administering the procurement in accordance with the state records management program.

History: En. Secs. 5, 26, Ch. 519, L. 1983; amd. Sec. 4, Ch. 443, L. 1997; amd. Sec. 1, Ch. 289, L. 2005.

18-4-132. Application. (1) This chapter applies to:

(a) the expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body under any contract, except a contract exempted from this chapter by this section or by another statute;

(b) a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or services from which income or a more advantageous business position may be derived by the state; and

(c) the disposal of state supplies.

(2) This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(3) This chapter does not apply to:

(a) either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4;

(b) construction contracts;

(c) expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system;

(d) contracts entered into by the Montana state lottery that have an aggregate value of less than \$250,000;

(e) contracts entered into by the state compensation insurance fund to procure insurance-related services;

(f) employment of:

(i) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(ii) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(iii) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

(iv) consulting actuaries;

(v) a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

(vi) a private consultant employed by the Montana state lottery;

(vii) a private investigator licensed by any jurisdiction;

(viii) a claims adjuster; or

(ix) a court reporter appointed as an independent contractor under 3-5-601;

(g) electrical energy purchase contracts by the university of Montana or Montana state university, as defined in 20-25-201. Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure.

(h) the purchase or commission of art for a museum or public display; or

(i) contracting under 47-1-216 of the Montana Public Defender Act.

(4) (a) Food products produced in Montana may be procured by either standard procurement procedures or by direct purchase. Montana-produced food products may be procured by direct purchase when:

(i) the quality of available Montana-produced food products is substantially equivalent to the quality of similar food products produced outside the state;

(ii) a vendor is able to supply Montana-produced food products in sufficient quantity; and

(iii) a bid for Montana-produced food products either does not exceed or reasonably exceeds the lowest bid or price quoted for similar food products produced outside the state. A bid reasonably exceeds the lowest bid or price quoted when, in the discretion of the person charged by law with the duty to purchase food products for a governmental body, the higher bid is reasonable and capable of being paid out of that governmental body's existing budget without any further supplemental or additional appropriation.

(b) The department shall adopt any rules necessary to administer the optional procurement exception established in this subsection (4).

(5) As used in this section, the following definitions apply:

(a) "Food" means articles normally used by humans as food or drink, including articles used for components of articles normally used by humans as food or drink.

(b) "Produced" means planted, cultivated, grown, harvested, raised, collected, processed, or manufactured.

History: En. Sec. 44, Ch. 519, L. 1983; amd. Sec. 1, Ch. 548, L. 1989; amd. Sec. 2, Ch. 359, L. 1995; amd. Sec. 5, Ch. 443, L. 1997; amd. Sec. 1, Ch. 407, L. 1999; amd. Sec. 1, Ch. 580, L. 1999; amd. Sec. 30, Ch. 7, L. 2001; amd. Sec. 15, Ch. 181, L. 2001; amd. Sec. 1, Ch. 153, L. 2003; amd. Sec. 2, Ch. 289, L. 2005; amd. Sec. 22, Ch. 449, L. 2005; amd. Sec. 1, Ch. 146, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 146 inserted (4)(a) regarding procurement of food products produced in Montana; inserted (5) defining food and produced; and made minor changes in style. Amendment effective April 5, 2007.

Applicability: Section 3, Ch. 146, L. 2007, provided: "[This act] applies to contracts for the purchase of food products by governmental bodies that are opened to bidding or direct purchase on or after [the effective date of this act]." Effective April 5, 2007.

18-4-133. Purchases exempt from general requirements. (1) When immediate delivery of articles or performance of service is required by the public exigencies, the articles or service required may be procured by open purchase or contract at the place and in the manner in which the articles are usually bought and sold or the services engaged between individuals but under the direction of the department.

(2) (a) The department may exempt the department of corrections and the department of public health and human services from the provisions of this chapter for the purchase of suitable clothing by the department of corrections and the department of public health and human services for residents of its institutions and community-based programs.

(b) As used in this section, "suitable clothing" means styled, seasonable clothing, which will allow the resident to make a normal appearance in the community.

(3) When none of the bids or proposals received in response to a valid solicitation are from a responsible bidder or offeror or responsive bidder or offeror, as defined in 18-4-301, the procurement officer may:

(a) cancel and reissue the solicitation. If the procurement officer reissues the solicitation, the procurement officer shall attempt to increase the number of potential vendors and may modify any specification in the original solicitation.

(b) directly negotiate with a vendor if the procurement officer determines that a second or subsequent solicitation would also be unsuccessful.

(4) The department shall adopt rules describing the conditions under which a procurement officer may negotiate directly with a vendor. The rules must reflect the purposes described in 18-4-122.

(5) When a state department, agency, or official administers a grant of public funds and contracts with a landowner to carry out a recreational or environmental remediation, reclamation, or conservation project that benefits the state, the department may exempt the landowner from the provisions of chapter 1 and this chapter if the landowner conducts the work or conducts a form of competitive procurement allowed by the terms of the contract.

History: En. Sec. 9, Ch. 66, L. 1923; re-en. Sec. 293.9, R.C.M. 1935; amd. Sec. 8, Ch. 80, L. 1961; amd. Sec. 74, Ch. 326, L. 1974; amd. Sec. 1, Ch. 230, L. 1977; R.C.M. 1947, 82-1919; amd. Sec. 1, Ch. 418, L. 1979; amd. Sec. 1, Ch. 74, L. 1981; amd. Sec. 47, Ch. 519, L. 1983; MCA 1981, 18-4-104; redes. 18-4-133 by Code Commissioner, 1983; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 62, Ch. 546, L. 1995; amd. Sec. 6, Ch. 443, L. 1997; amd. Sec. 16, Ch. 181, L. 2001.

18-4-134 through 18-4-140 reserved.

18-4-141. Contract transfers and collusion prohibited — violations and penalty.

(1) A contract or order or any interest in a contract or order may not be transferred, assigned, or subcontracted by the party to whom the contract or order is given to any other party without the express written approval of the state, and the state may declare void any unapproved transfer, assignment, or subcontract.

(2) Collusion or secret agreements between vendors for the purpose of securing any advantage to the vendors as against the state in the awarding of contracts are prohibited. The state may declare the contract void if the department finds sufficient evidence after a contract has been let that the contract was obtained by a vendor or vendors by reason of collusive or secret agreement among the vendors to the disadvantage of the state.

(3) All rights of action for a breach of a contract by the contracting parties are reserved to the state.

(4) A person who violates the provisions of 2-2-201 or this section, or both, is guilty of a misdemeanor and shall be fined an amount of not less than \$500 or more than \$5,000, and the state of Montana may at its option declare any contract in violation of the provisions of 2-2-201 or this section, or both, void ab initio.

History: En. Sec. 12, Ch. 66, L. 1923; re-en. Sec. 293.12, R.C.M. 1935; amd. Sec. 2, Ch. 43, L. 1973; amd. Sec. 77, Ch. 326, L. 1974; amd. Sec. 5, Ch. 97, L. 1977; R.C.M. 1947, 82-1922; amd. Sec. 1, Ch. 52, L. 1983; MCA 1981, 18-4-105; redes. 18-4-141 by Code Commissioner, 1983; amd. Sec. 7, Ch. 443, L. 1997; amd. Sec. 17, Ch. 181, L. 2001.

Part 2 Duties of Department

18-4-221. General procurement authority and duties of department — rules. (1)

Except as otherwise provided in this chapter, the department shall adopt rules, consistent with this chapter, governing the procurement and disposal of any and all supplies and services to be procured by the state. The department shall consider and decide matters of policy within the provisions of this chapter. The department may audit and monitor the implementation of its rules and the requirements of this chapter.

(2) Except as otherwise specifically provided by law, the department shall, in accordance with its rules:

(a) procure or supervise the procurement of all supplies and services needed by the state; and

(b) sell, trade, or otherwise dispose of surplus supplies belonging to the state.

(3) Nothing contained herein shall preclude the state from doing its own printing on its own printing facilities.

History: En. Sec. 6, Ch. 519, L. 1983.

18-4-222. Delegation of authority by department. Subject to the rules of the department, the director may delegate procurement authority to designees or to any state department, agency, or official.

History: En. Sec. 7, Ch. 519, L. 1983.

18-4-223. State procurement rules — delegation — existing rights. (1) Rules shall be adopted by the department in accordance with the applicable provisions of Title 2, chapter 4.

(2) The department may not delegate its power to adopt rules.

(3) No rule may change a commitment, right, or obligation of the state or of a contractor under a contract in existence on the effective date of such rule.

History: En. Sec. 8, Ch. 519, L. 1983.

18-4-224. Contract clauses — rules. (1) The department may, in its discretion, permit or require the inclusion of clauses providing for adjustments in prices, time of performance, or other appropriate contract provisions relating to the following subjects:

(a) the unilateral right of the state to order in writing:

(i) changes in the work within the scope of the contract; and

(ii) temporary work stoppage or delay of performance; and

(b) variations occurring between estimated quantities of work in a contract and actual quantities.

(2) Adjustments in price pursuant to clauses established under subsection (1) must be computed in one or more of the following ways:

(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon after commencement of performance as practicable;

(b) by unit prices specified in the contract or subsequently agreed upon;

(c) by the costs attributable to the events or situations under clauses established under subsection (1) with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon; or

(d) in any other manner as the contracting parties may mutually agree.

(3) The department may, in its discretion, permit or require the inclusion in state contracts of clauses providing for appropriate remedies and relating to the following subjects:

(a) liquidated damages, as appropriate;

(b) specified excuses for delay or nonperformance;

(c) termination of the contract for default; and

(d) termination of the contract, in whole or in part, for the convenience of the state.

(4) The director or the head of a purchasing agency may vary the clauses established by the department under subsections (1) and (3) for inclusion in any particular state contract. Any variations must be supported by a written determination that states the circumstances justifying the variation. Notice of any material variation must be stated in the invitation for bids or request for proposals.

(5) Regardless of a provision in a contract, the department may accept a lower price or better value offered by a contractor.

History: En. Sec. 32, Ch. 519, L. 1983; amd. Sec. 8, Ch. 443, L. 1997.

18-4-226. Surplus supply — rules. (1) As used in this section, the following definitions apply:

(a) “Supplies” means supplies owned by the state.

(b) “Surplus supplies” means any supplies having a remaining useful life but that are no longer required by the agency in possession of them. This includes obsolete supplies, scrap materials, and supplies that have completed their useful life cycle.

(2) The department shall adopt rules governing:

(a) the management of supplies during their entire life cycle;

(b) the sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, donation to a school district as provided in 18-6-101, or other appropriate method designated by rule;

(c) transfer of surplus supplies.

(3) An employee of the owning or disposing agency directly involved with the disposal may not purchase supplies sold by the employee’s agency.

(4) Proceeds from the sale, lease, or disposal of surplus supplies must be allocated as provided by 18-6-101, less a reasonable handling fee.

History: En. Secs. 34 thru 36, Ch. 519, L. 1983; amd. Sec. 3, Ch. 234, L. 1991; amd. Sec. 2, Ch. 441, L. 1999.

18-4-227. Procurement rebate account — funding — use. (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the procurement rebate special revenue account.

(2) All rebates credited to the department from using state procurement cards and contracts must be deposited in the procurement rebate special revenue account.

(3) The money in the account may be used only to:

(a) administer the state’s procurement card programs; and

(b) reimburse applicable funds to the federal government.

(4) The unreserved, unexpended balance of the funds collected under this section must be deposited in the general fund by the close of the fiscal year.

History: En. Sec. 1, Ch. 492, L. 2007.

Compiler’s Comments

Effective Date: Section 3, Ch. 492, L. 2007, provided that this section is effective July 1, 2007.

18-4-228 through 18-4-230 reserved.

18-4-231. Definition of specification. As used in 18-4-231 through 18-4-234, “specification” means any description of the physical or functional characteristics or of the nature of a supply or service. It may include a description of any requirement for inspecting, testing, or preparing a supply or service for delivery.

History: En. Sec. 28, Ch. 519, L. 1983.

18-4-232. Specifications — rules. (1) The department shall adopt rules governing the preparation, maintenance, and content of specifications for supplies and services required by the state.

(2) The department shall prepare, issue, revise, maintain, and monitor the use of specifications for supplies and services required by the state.

History: En. Sec. 29, Ch. 519, L. 1983.

18-4-233. Using agencies’ advice. The director may obtain expert advice and assistance from personnel of using agencies in the development of specifications and may delegate in writing to a using agency the authority to prepare and utilize its own specifications.

History: En. Sec. 30, Ch. 519, L. 1983.

18-4-234. Competition. All specifications shall promote overall economy for the purposes intended and encourage competition in satisfying the state’s needs and may not be unduly restrictive.

History: En. Sec. 31, Ch. 519, L. 1983.

18-4-235 through 18-4-240 reserved.

18-4-241. Authority to remove or suspend vendor. (1) The department may remove a vendor for cause from consideration for award of contracts by the state.

(2) The department may temporarily suspend a vendor from consideration for award of contracts if there is probable cause to believe that the vendor has engaged in activities that may lead to removal. If an indictment has been issued for an offense that would be a cause for removal under subsection (3), the suspension must, at the request of the attorney general, remain in effect at a minimum until after the trial of the suspended vendor. The authority to remove or suspend must be exercised in accordance with rules adopted by the department.

(3) The causes for removal or suspension include the following:

(a) violation of contract provisions, as set forth in subsections (3)(a)(i) and (3)(a)(ii), of a character that is regarded by the department to be so serious as to justify removal action:

(i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for removal;

(b) failure to respond to a number of solicitations over a period of time as determined by the department in accordance with rules or failure to provide the department with a correct address;

(c) any other cause that the department determines to be so serious and compelling as to affect responsibility as a state contractor, including removal by another governmental entity; and

(d) failure to comply with the provisions of Title 39, chapter 51, or Title 39, chapter 71.

(4) The department shall issue a written decision to remove or suspend a vendor, stating the reasons for the action taken, for reasons other than those reasons provided in subsection (3)(b). A copy of the decision must be mailed or otherwise furnished immediately to the vendor involved.

History: En. Sec. 9, Ch. 519, L. 1983; amd. Sec. 26, Ch. 234, L. 1987; amd. Sec. 9, Ch. 443, L. 1997.

18-4-242. Exclusive remedies for unlawful solicitation or award. (1) This section establishes the exclusive remedies for a solicitation or award of a contract determined to be in violation of the law.

(2) Except for small purchases or limited solicitations made pursuant to 18-4-305, a bidder, offeror, or contractor aggrieved in connection with the solicitation or award of a contract may

protest to the department. The protest must be submitted to the department in writing no later than 14 days after execution of the contract.

(3) If the protest is not resolved by mutual agreement, the department shall issue in writing a decision on the protest within 30 days after receipt of the protest. The decision must:

- (a) state the reason for the action taken by the department with regard to the contract; and
- (b) inform the aggrieved party of the party's right to request, within 14 days after the date of the department's written decision, a contested case hearing pursuant to the Montana Administrative Procedure Act.

(4) In a protest or contested case proceeding, the department may, in an appropriate case, order a remedy provided in subsection (5) or (6).

(5) If before an award it is determined that a solicitation or proposed award of a contract is in violation of law, the solicitation or proposed award may be:

- (a) canceled; or
- (b) revised to comply with the law.

(6) (a) If after an award it is determined that a solicitation or award of a contract is in violation of law and the person awarded the contract has not acted fraudulently or in bad faith, the contract may be:

- (i) ratified and affirmed, provided it is determined that doing so is in the best interests of the state; or
- (ii) terminated, and the person awarded the contract must be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, before the termination.

(b) If after an award it is determined that a solicitation or award of a contract is in violation of law and the person awarded the contract has acted fraudulently or in bad faith, the contract may be:

- (i) declared void; or
- (ii) ratified and affirmed if that action is in the best interests of the state, without prejudice to the state's rights to appropriate damages.

(7) The exclusive method of judicial review of a solicitation or award by the department pursuant to this chapter is by a petition for judicial review pursuant to 2-4-702. In a proceeding pursuant to that section, the court may, in an appropriate case, order a remedy provided by subsection (5) or (6) of this section. Except as provided in subsections (6)(a)(ii) and (6)(b)(ii), there is no right under any legal theory to recover a form of damages or expenses for a solicitation or award of a contract in violation of law. Any other claim, cause of action, or request for relief for solicitations or awards allegedly made in violation of law may not be heard or granted by a district court other than as provided in this section.

(8) The state is not required to delay, halt, or modify the procurement process pending the result of a protest, contested case proceeding, or judicial review.

(9) The department may adopt rules governing the protest of solicitations or awards.

History: En. Sec. 10, Ch. 519, L. 1983; amd. Sec. 10, Ch. 443, L. 1997; amd. Sec. 48, Ch. 51, L. 1999.

Part 3

Procurement Procedure

18-4-301. Definitions. As used in this part, the following definitions apply:

(1) "Alternative procurement method" means a method of procuring supplies or services in a manner not specifically described in this chapter, but instead authorized by the department under 18-4-302.

(2) "American-made" means either a product made exclusively within the United States or a value-added product consisting of a product that contains 50% or more of materials from the United States.

(3) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs that are allowable and allocable in accordance with the contract terms and the provisions of this chapter and a fee, if any.

(4) (a) "Displacement" means the layoff, demotion, or involuntary transfer of a state employee.

(b) Displacement does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.

(5) “Established catalog price” means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(6) “Invitation for bids” means all documents, whether attached or incorporated by reference, used for soliciting bids.

(7) “Office supply” means an item included under the office supply commodity class codes maintained by the department.

(8) “Purchase description” means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

(9) “Request for proposals” means all documents, whether attached or incorporated by reference, used for soliciting proposals.

(10) “Responsible” means the capability in all respects to perform fully the contract requirements and the integrity and reliability that will ensure good faith performance.

(11) “Responsive” means conforms in all material respects to the invitation for bids or request for proposals.

(12) “Term contract” means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time.

History: En. Sec. 12, Ch. 519, L. 1983; amd. Sec. 1, Ch. 303, L. 1987; amd. Sec. 1, Ch. 761, L. 1991; amd. Secs. 18, 19, Ch. 181, L. 2001; amd. Sec. 3, Ch. 289, L. 2005; amd. Sec. 1, Ch. 226, L. 2007.

Compiler’s Comments

2007 Amendment: Chapter 226 inserted definition of American-made; and made minor changes in style. Amendment effective October 1, 2007.

18-4-302. Methods of source selection — authorization for alternative procurement methods.

(1) Unless otherwise authorized by law, all state contracts for supplies and services must be awarded by a source selection method provided for in this title. Supplies or services offered for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or services are regulated by the public service commission or other governmental authority.

(2) When the department or another agency opens bids or proposals, if a supplier’s current publicly advertised or established catalog price is received at or before the time that the bids or proposals are opened and is less than the bid of the lowest responsible and responsive bidder or offeror or improves upon the conditions for the best proposal received using the same factors and weights included in the proposal, the department or agency may reject all bids and purchase the supply from that supplier without meeting the requirements of 18-4-303 through 18-4-306.

(3) An office supply procured by the department’s central stores program may be purchased by an agency, without meeting the requirements of 18-4-303 through 18-4-306, from a supplier whose publicly advertised price, established catalog price, or discount price offered to the agency is less than the price offered by the central stores program if the office supply conforms in all material respects to the terms, conditions, and quality offered by the central stores program. A state office supply term contract must include a provision by which the contracting parties acknowledge and agree to the provisions of this subsection.

(4) (a) Under rules adopted by the department, an agency may request from the department authorization for an alternative procurement method.

(b) A request for authorization must specify:

(i) the problem to be solved;

(ii) the proposed alternative procurement method;

(iii) the reasons why the alternative procurement method may be more appropriate than a method authorized by law; and

(iv) how competition and fairness will be achieved by the alternative procurement method.

(c) Within 30 days after receiving the request, the department shall:

- (i) evaluate the request;
- (ii) approve or deny the request; and
- (iii) issue a written statement providing the reasons for its decision.

(d) Whenever the department approves a request submitted under this section, the department:

- (i) may authorize the alternative procurement method on a trial basis; and
- (ii) if the alternative procurement method is employed, shall make a written determination as to the success of the method.

(e) If the department determines that the alternative procurement method is successful and should be an alternative that is generally available, it shall promulgate rules that establish the use of the alternative procurement method as an additional source selection method. The rules promulgated by the department under this subsection must reflect the purposes described in 18-4-122.

History: En. Sec. 13, Ch. 519, L. 1983; amd. Sec. 2, Ch. 303, L. 1987; amd. Sec. 1, Ch. 329, L. 1989; amd. Sec. 1, Ch. 11, Sp. L. November 1993; amd. Sec. 11, Ch. 443, L. 1997; amd. Sec. 20, Ch. 181, L. 2001.

18-4-303. Competitive sealed bidding. (1) An invitation for bids must be issued and must include a purchase description and conditions applicable to the procurement.

(2) Adequate public notice of the invitation for bids must be given a reasonable time before the date set forth in the invitation for the opening of bids, in accordance with rules adopted by the department. Notice may include publication in a newspaper of general circulation at a reasonable time before the bid opening.

(3) Bids must be opened publicly at the time and place designated in the invitation for bids. Each bidder and any member of the public has the right to be present, either in person or by agent, when the bids are opened and has the right to examine and inspect all bids after they are opened and reviewed by the procurement officer for release, subject to the same limitations specified in 18-4-304(4) for competitive sealed proposals.

(4) The amount of each bid and other relevant information as may be specified by rule, together with the name of each bidder, must be recorded. The record must be open to public inspection.

(5) After the time of award, all bids and bid documents must be open to public inspection in accordance with the provisions of 18-4-126.

(6) Bids must be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life-cycle costs. The invitation for bids must set forth the evaluation criteria to be used. Only criteria set forth in the invitation for bids may be used in bid evaluation.

(7) Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on bid mistakes may be permitted in accordance with rules adopted by the department. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the state or fair competition may not be permitted. Except as otherwise provided by rule, all decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes must be supported by a written determination made by the department.

(8) If an award is made, it must be made with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, including the preferences established by Title 18, chapter 1, part 1. If all bids exceed available funds as certified by the appropriate fiscal officer and the lowest responsible and responsive bid does not exceed the funds by more than 5%, the director or the head of a purchasing agency may, in situations in which time or economic considerations preclude resolicitation of a reduced scope, negotiate an adjustment of the bid price, including changes in the bid requirements, with the lowest responsible and responsive bidder in order to bring the bid within the amount of available funds.

(9) When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers, to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

(10) In case of a tie bid, preference must be given to the bidder, if any, offering American-made products or supplies.

History: En. Sec. 14, Ch. 519, L. 1983; amd. Sec. 2, Ch. 761, L. 1991; amd. Sec. 12, Ch. 443, L. 1997; amd. Sec. 4, Ch. 289, L. 2005; amd. Sec. 2, Ch. 226, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 226 inserted (10) concerning tiebreaker for American-made products or supplies. Amendment effective October 1, 2007.

18-4-304. Competitive sealed proposals. (1) The department may procure supplies and services through competitive sealed proposals.

(2) Proposals must be solicited through a request for proposals.

(3) Adequate public notice of the request for proposals must be given in the same manner as provided in 18-4-303(2).

(4) After the proposals have been opened at the time and place designated in the request for proposals and reviewed by the procurement officer for release, proposal documents may be inspected by the public, subject to the limitations of:

- (a) the Uniform Trade Secrets Act, Title 30, chapter 14, part 4;
- (b) matters involving individual safety as determined by the department; and
- (c) other constitutional protections.

(5) The request for proposals must state the evaluation criteria and their relative importance. If an award is made, it must be made to the responsible and responsive offeror whose proposal best meets the evaluation criteria. Other criteria may not be used in the evaluation. The contract file must demonstrate the basis on which the award is made.

(6) The department may discuss a proposal with an offeror for the purpose of clarification or revision of the proposal.

History: En. Sec. 15, Ch. 519, L. 1983; amd. Sec. 10, Ch. 130, L. 1995; amd. Sec. 13, Ch. 443, L. 1997; amd. Sec. 2, Ch. 416, L. 1999; amd. Sec. 5, Ch. 289, L. 2005.

18-4-305. Small purchases and limited solicitations. Any procurement not exceeding the amount established by rule may be made in accordance with small purchase or limited solicitation procedures established by the department. Procurement requirements may not be artificially divided so as to constitute a small purchase or limited solicitation under this section.

History: En. Sec. 16, Ch. 519, L. 1983; amd. Sec. 14, Ch. 443, L. 1997.

18-4-306. Sole source procurement — records. (1) A contract may be awarded for a supply or service item without competition when, under rules adopted by the department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines in writing that:

- (a) there is only one source for the supply or service item;
- (b) only one source is acceptable or suitable for the supply or service item; or
- (c) the supply or service item must be compatible with current supplies or services.

(2) The department may require the submission of cost or pricing data in connection with an award under this section.

(3) The department shall maintain or shall require the head of a purchasing agency to maintain a record listing all contracts made under this section for a minimum of 4 years. The record must contain:

- (a) each contractor's name;
 - (b) the amount and type of each contract; and
 - (c) a listing of the supplies or services procured under each contract.
- (4) The record must be available for public inspection.

History: En. Secs. 17, 27, Ch. 519, L. 1983; amd. Sec. 21, Ch. 181, L. 2001.

18-4-307. Cancellation of invitations for bids or requests for proposals. An invitation for bids, a request for proposals, or other solicitation may be canceled or any or all bids or proposals may be rejected in whole or in part, as may be specified in the solicitation, when it is in the best interests of the state. The reasons therefor must be made part of the contract file.

History: En. Sec. 18, Ch. 519, L. 1983.

18-4-308. Nonresponsibility of bidders and offerors. A written determination of nonresponsibility of a bidder or offeror must be made in accordance with rules adopted by the department. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to that bidder or offeror.

History: En. Sec. 19, Ch. 519, L. 1983; amd. Sec. 6, Ch. 289, L. 2005.

18-4-309. Prequalification of suppliers. Prospective suppliers may be prequalified in accordance with department rules for particular types of supplies and services.

History: En. Sec. 20, Ch. 519, L. 1983; amd. Sec. 15, Ch. 443, L. 1997.

18-4-310. Types of contracts. Any type of contract that will promote the best interests of the state may be used.

History: En. Sec. 21, Ch. 519, L. 1983; amd. Sec. 16, Ch. 443, L. 1997.

18-4-311. Approval of accounting system. Except with respect to firm fixed-price contracts, no contract type may be used unless it has been determined in writing by the department that:

- (1) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and
- (2) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

History: En. Sec. 22, Ch. 519, L. 1983.

18-4-312. Bid and contract performance security. (1) For state contracts for the procurement of services or of supplies, the department may in its discretion require:

- (a) bid security;
- (b) contract performance security to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, mechanics, and subcontractors; or
- (c) both bid and contract performance security.

(2) (a) If security is required under subsection (1), the following types of security may be required to be deposited with the state:

- (i) a sufficient bond with a licensed surety company as surety;
- (ii) an irrevocable letter of credit in accordance with the provisions of Title 30, chapter 5, part 1;
- (iii) money of the United States;
- (iv) a cashier's check, certified check, bank money order, certificate of deposit, money market certificate, or bank draft that is drawn or issued by a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation or that is drawn and issued by a credit union insured by the national credit union share insurance fund.

(b) The department may not require that a bond required pursuant to subsection (2)(a)(i) be furnished by a particular surety company or by a particular insurance producer for a surety company.

(3) The amount and type of the security must be determined by the department to be sufficient to cover the risk involved to the state. The security must be payable to the state of Montana. Contract performance security must remain in effect for the entire contract period, except as provided pursuant to an agency liquor store franchise agreement under 16-2-101. In determining the amount and type of contract performance security required for each contract, the department shall consider the nature of the performance and the need for future protection to the state. In determining the need for and amount of bid security, the department shall consider the risks involved to the state if a successful bidder or offeror fails to enter into a formal contract. The considerations must include but are not limited to the type of supply or service being procured, the dollar amount of the proposed contract, and delivery time requirements. The department may adopt rules to assist it in making these determinations and in protecting the state in dealing with irrevocable letters of credit. Bid and contract security requirements must be included in the invitations for bids or requests for proposals.

(4) If a bidder or offeror to whom a contract is awarded fails or refuses to enter into the contract or provide contract performance security, as required by the invitation for bid or request for proposal, after notification of award, the department may, in its discretion, require the bidder or offeror to forfeit the bid security to the state and become immediately liable on the bid security, but not in excess of the sum stated in the security. The liability of the bidder or offeror, the maker of the security or bid bond, or the liability on the bid bond or other security may not exceed the amount specified in the invitation for bid or request for proposal.

(5) Negotiable instruments provided as bid security must be refunded to those bidders or offerors whose bids or proposals are not accepted.

(6) The provisions of Title 18, chapter 1, part 2, and Title 18, chapter 2, parts 2 and 3, do not apply to procurements under this chapter.

History: En. Sec. 23, Ch. 519, L. 1983; amd. Sec. 2, Ch. 424, L. 1985; amd. Sec. 11, Ch. 130, L. 1995; amd. Sec. 17, Ch. 443, L. 1997; amd. Sec. 4, Ch. 203, L. 2003; amd. Sec. 7, Ch. 289, L. 2005.

18-4-313. Contracts — terms, extensions, and time limits. (1) Except as provided in subsection (2) or unless otherwise provided by law, a contract, lease, or rental agreement for supplies or services may not be made for a period of more than 7 years. A contract, lease, or rental agreement may be extended or renewed if the terms of the extension or renewal, if any, are included in the solicitation, if funds are available for the first fiscal period at the time of the agreement, and if the total contract period, including any extension or renewal, does not exceed 7 years. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.

(2) The contract term limit specified in subsection (1) does not apply to:

(a) a contract for hardware, software, or other information technology resources, which may be made for a period not to exceed 10 years;

(b) a department of revenue liquor store contract governed by the term specified in 16-2-101;

(c) a department of corrections contract governed by the term specified in 53-1-203, 53-30-505, or 53-30-608; and

(d) the department of administration state employee group benefit plans contracts governed by the term specified in 2-18-811, including group benefit plan contracts made in partnership with the Montana university system group benefit plan.

(3) Prior to the issuance, extension, or renewal of a contract, it must be determined that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(4) If funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled.

History: En. Sec. 24, Ch. 519, L. 1983; amd. Sec. 1, Ch. 121, L. 1985; amd. Sec. 3, Ch. 228, L. 1993; amd. Sec. 12, Ch. 130, L. 1995; amd. Sec. 63, Ch. 546, L. 1995; amd. Sec. 22, Ch. 181, L. 2001; amd. Secs. 40, 46, Ch. 313, L. 2001; amd. Sec. 8, Ch. 289, L. 2005; amd. Sec. 2, Ch. 127, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 127 inserted (2)(d) concerning state employee group benefit plans; and made minor changes in style. Amendment effective July 1, 2007.

18-4-314. Reporting of anticompetitive practices. If for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the attorney general by the department.

History: En. Sec. 25, Ch. 519, L. 1983.

Part 4 Cooperative Purchasing

18-4-401. Definitions. As used in this part, the following definitions apply:

(1) "Cooperative purchasing" means procurement conducted by or on behalf of more than one public procurement unit.

(2) "Local public procurement unit" means a county, city, town, or other subdivision of the state or a public agency of any such subdivision; public authority; educational, health, or other

institution; to the extent provided by law, any other entity that expends public funds for the procurement of supplies and services; and any nonprofit corporation operating a charitable hospital.

(3) "Public procurement unit" means a local or state public procurement unit of this or any other state, including an agency of the United States, or a tribal procurement unit.

(4) "State public procurement unit" means a state department, agency, or official that expends public funds for the procurement of supplies and services.

(5) "Tribal procurement unit" means a tribal government, tribal entity, or official of a tribal government located in Montana that expends tribal funds or funds administered by a tribe for the procurement of supplies and services to the extent provided by tribal or federal law.

History: En. Sec. 37, Ch. 519, L. 1983; amd. Sec. 1, Ch. 200, L. 1999.

18-4-402. Cooperative purchasing authorized. The department may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies or services with one or more public procurement units in accordance with an agreement entered into between the participants independent of the requirements of part 3. Cooperative purchasing may include purchasing through federal supply schedules of the United States general services administration, joint or multiparty contracts between public procurement units and open-ended state public procurement unit contracts that are made available to local public procurement units.

History: En. Sec. 38, Ch. 519, L. 1983; amd. Sec. 18, Ch. 443, L. 1997.

18-4-403. Sale, acquisition, or use of supplies by a public procurement unit. The department may sell to, acquire from, or use any supplies belonging to another public procurement unit independent of the requirements of part 3.

History: En. Sec. 39, Ch. 519, L. 1983.

18-4-404. Cooperative use of supplies or services. The department may enter into an agreement, independent of the requirements of part 3, with any other public procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

History: En. Sec. 40, Ch. 519, L. 1983.

18-4-405. Joint use of facilities. The department may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit under the terms agreed upon between the parties.

History: En. Sec. 41, Ch. 519, L. 1983.

18-4-406. Information and services — fees. (1) Upon request, the department may make available to public procurement units certain services, including but not limited to the following:

- (a) standard forms;
- (b) printed manuals;
- (c) product specifications and standards;
- (d) quality assurance testing services and methods;
- (e) qualified products lists;
- (f) source information;
- (g) common use commodities listings;
- (h) supplier prequalification information;
- (i) supplier performance ratings;
- (j) debarred and suspended bidders lists;
- (k) forms for invitations for bids, requests for proposals, instructions to bidders, general contract provisions, and other contract forms;
- (l) contracts or published summaries thereof, including price and time of delivery information; and
- (m) cooperative purchasing.

(2) The state, through the department, may provide technical services, including but not limited to the following:

- (a) development of product specifications;
- (b) development of quality assurance test methods, including receiving, inspection, and acceptance procedures;

- (c) use of product testing and inspection facilities; and
- (d) use of personnel training programs.

(3) The department may enter into contractual arrangements and publish a schedule of fees for the services provided under subsections (1) and (2). Such fees may be used by the department to offset costs incurred in providing such services.

History: En. Sec. 42, Ch. 519, L. 1983.

18-4-407. Review of procurement requirements. To the extent possible, the department may collect information concerning the type, cost, quality, and quantity of commonly used supplies or services being procured or used by state public procurement units. The department may make available all such information to any public procurement unit upon request.

History: En. Sec. 43, Ch. 519, L. 1983.

CHAPTER 5 SPECIAL PURCHASING CONDITIONS

Part 2 Surplus Property Procurement

18-5-201. Administration of the state agency for federal surplus property. There is a Montana state agency for federal surplus property that is administered by a department designated by the governor. The director of the department may prescribe the duties of personnel needed to carry out the duties under this part.

History: En. Sec. 1, Ch. 136, L. 1953; amd. Sec. 1, Ch. 478, L. 1977; R.C.M. 1947, 82-3101; amd. Sec. 2, Ch. 485, L. 1989.

18-5-202. Authority and duties of the state agency for surplus property. (1) The state agency for surplus property is hereby authorized and empowered to:

(a) acquire from the United States of America under and in conformance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended, hereinafter referred to as the “act”, such property, including equipment, materials, books, or other supplies under the control of any department or agency of the United States of America as may be usable and necessary for purposes authorized by the act;

(b) warehouse such property; and

(c) distribute such property within the state to eligible participants.

(2) The state agency for surplus property is hereby authorized to receive applications from eligible participants for the acquisition of federal surplus real property, investigate the same, obtain expression of views respecting such applications from the appropriate authorities of the state, make recommendations regarding the need of such applicant for the property, the merits of its proposed program of utilization, the suitability of the property for such purposes, and otherwise assist in the processing of such applications for acquisition of real and related personal property of the United States under section 203(k) of the act as amended.

(3) For the purpose of executing its authority under this part, the state agency for surplus property is authorized and empowered to adopt, amend, or rescind such rules and prescribe such requirements as may be deemed necessary and take such other action as is deemed necessary and suitable in the administration of this part to assure maximum utilization by and benefit to participants within the state from property distributed under this part.

(4) The state agency for surplus property is authorized and empowered to make such certifications, take such action, make such expenditures, and enter into such contracts, agreements, and undertakings for and in the name of the state (including cooperative agreements with any federal agencies providing for utilization by and exchange between them of the property, facilities, personnel, and services of each by the other), require such reports and make such investigation as may be required by law or regulation of the United States of America in connection with the disposal of real property and the receipt, warehousing, and distribution of personal property received by the state agency for surplus property from the United States of America.

(5) The state agency for surplus property is authorized and empowered to act as clearinghouse of information for eligible participants to locate both real and personal property available for acquisition from the United States of America, to ascertain the terms and conditions under which such property may be obtained, to receive requests from eligible participants and to transmit to them all available information in reference to such property, and to aid and assist eligible participants in every way possible in the consummation of acquisitions or transactions hereunder.

(6) The state agency for surplus property, in the administration of this part, shall cooperate to the fullest extent consistent with the provisions of the act, with the departments or agencies of the United States of America and shall file a state plan of operation, operate in accordance therewith, and take such action as may be necessary to meet the minimum standards prescribed in accordance with the act; make such reports in such form and containing such information as the United States of America or any of its departments or agencies may from time to time require; and comply with the laws of the United States of America and the rules and regulations of any of the departments or agencies of the United States of America governing the allocation, transfer, use, or accounting for property donable or donated to the state.

History: En. Sec. 2, Ch. 136, L. 1953; amd. Sec. 1, Ch. 166, L. 1957; amd. Sec. 2, Ch. 478, L. 1977; R.C.M. 1947, 82-3102.

18-5-203. Agency for surplus property — authorization for financing. The state agency for surplus property must be self-sustaining and shall pay for its operation and maintenance directly from receipts from surplus property that must be deposited in the treasury in an enterprise fund.

History: En. Sec. 4, Ch. 136, L. 1953; amd. Sec. 66, Ch. 147, L. 1963; amd. Sec. 1, Ch. 389, L. 1977; amd. Sec. 3, Ch. 478, L. 1977; R.C.M. 1947, 82-3104; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 1, Ch. 42, L. 2001.

18-5-204. Department director — delegating powers. The director of the department may delegate to any employees of the state agency for surplus property such power and authority as he deems reasonable and proper for the effective administration of this part.

History: En. as addition to Ch. 31, Title 82, 1947 Code by Sec. 2, Ch. 166, L. 1957; amd. Sec. 49, Ch. 177, L. 1965; amd. Sec. 4, Ch. 478, L. 1977; R.C.M. 1947, 82-3105.

18-5-205. Officers or employees authorized to secure transfer of federal surplus property. (1) Notwithstanding any provision of law to the contrary, the governing board or, if there is none, the executive head of a state department or agency or of a city, county, school district, or other political subdivision may by order or resolution confer upon an officer or employee continuing authority to:

(a) secure the transfer to it of surplus property under this part through the department designated in 18-5-201 under the provisions of section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended; and

(b) obligate the state or political subdivision and its funds to the extent necessary to comply with the terms and conditions of the transfers.

(2) The authority conferred upon an officer or employee by an order or resolution remains in effect until the order or resolution is revoked and written notice of the revocation has been received by the department.

History: En. as addition to Ch. 31, Title 82, 1947 Code by Sec. 3, Ch. 166, L. 1957; amd. Sec. 5, Ch. 478, L. 1977; R.C.M. 1947, 82-3106; amd. Sec. 3, Ch. 485, L. 1989.

CHAPTER 6 SALES

Part 1 Sale of State Property

18-6-101. Power to sell state property — proceeds credited to general fund. (1) The department has exclusive power, subject to the approval of the governor, to sell or otherwise dispose of or to authorize the sale or other disposition of all materials and supplies, service equipment, or other personal property of any kind owned by the state but not needed or used by

any state institution or by any department of state government. Upon request, the department shall authorize a state department or entity to donate property to a school district for classroom use pursuant to procedures implemented by the office of public instruction to ensure adequate notice of the availability of surplus state property and equal access and fair distribution of the property to school districts.

(2) Unless otherwise provided by law, the department shall credit the general fund with all money received.

(3) Whenever the personal property was accounted for in an enterprise or internal service fund or designated subfund account, the proceeds of the sale must be credited to the appropriate enterprise or internal service fund or designated subfund account.

History: En. Sec. 4, Ch. 66, L. 1923; re-en. Sec. 293.4, R.C.M. 1935; amd. Sec. 74, Ch. 199, L. 1965; amd. Sec. 1, Ch. 11, L. 1971; amd. Sec. 68, Ch. 326, L. 1974; R.C.M. 1947, 82-1914(part); amd. Sec. 4, Ch. 58, L. 1979; amd. Sec. 1, Ch. 346, L. 1981; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 2, Ch. 234, L. 1991; amd. Sec. 3, Ch. 441, L. 1999.

CHAPTER 8 PROCUREMENT OF SERVICES

Part 2 Architectural, Engineering, and Land Surveying Services

18-8-201. Statement of policy. The legislature hereby establishes a state policy that governmental agencies publicly announce requirements for architectural, engineering, and land surveying services and negotiate contracts for such professional services on the basis of demonstrated competence and qualifications for the type of professional services required and at fair and reasonable prices.

History: En. Sec. 1, Ch. 51, L. 1987.

18-8-202. Definitions. Unless the context clearly indicates otherwise, in this part, the following definitions apply:

(1) “Agency” means a state agency, local agency, or special district.

(2) “Architectural, engineering, and land surveying” means services rendered by a person, other than as an employee of an agency, contracting to perform activities within the scope of the general definition of professional practice and licensed for the respective practice as an architect pursuant to Title 37, chapter 65, or an engineer or land surveyor pursuant to Title 37, chapter 67.

(3) “Licensed professional” or “licensed architect, professional engineer, professional land surveyor” means a person providing professional services who is not an employee of the agency for which the services are provided.

(4) “Local agency” means a city, town, county, special district, municipal corporation, agency, port district or authority, airport authority, political subdivision of any type, or any other entity or authority of local government, in corporate form or otherwise.

(5) “Person” means an individual, organization, group, association, partnership, firm, joint venture, or corporation.

(6) “Special district” means a unit of local government, other than a city, town, or county, authorized by law to perform a single function or a limited number of functions, including but not limited to water districts, irrigation districts, fire districts, fire service areas, school districts, community college districts, hospital districts, sewer districts, and transportation districts.

(7) “State agency” means a department, agency, commission, bureau, office, or other entity or authority of state government.

History: En. Sec. 2, Ch. 51, L. 1987; amd. Sec. 49, Ch. 51, L. 1999; amd. Sec. 5, Ch. 449, L. 2007.

Compiler’s Comments

2007 Amendment: Chapter 449 in definition of special district near middle after “fire districts” inserted “fire service areas”; and made minor changes in style. Amendment effective June 1, 2007.

18-8-203. Public notice of agency requirements. Each agency shall publish in advance its requirement for professional services. The announcement must state concisely the general scope and nature of the project or work for which the services are required and the address of a

representative of the agency who can provide further details. An agency may comply with this section by:

- (1) publishing an announcement on each occasion when professional services provided by a licensed professional are required by the agency; or
- (2) announcing generally to the public its projected requirement for any category or type of professional services.

History: En. Sec. 3, Ch. 51, L. 1987.

18-8-204. Procedures for selection. (1) In the procurement of architectural, engineering, and land surveying services, the agency may encourage firms engaged in the lawful practice of their profession to submit annually or biennially a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.

(2) (a) The agency shall then select, based on criteria established under agency procedures and guidelines and the law, the firm considered most qualified to provide the services required for the proposed project.

(b) The agency procedures and guidelines must be available to the public and include at a minimum the following criteria as they relate to each firm:

- (i) the qualifications of professional personnel to be assigned to the project;
- (ii) capability to meet time and project budget requirements;
- (iii) location;
- (iv) present and projected workloads;
- (v) related experience on similar projects; and
- (vi) recent and current work for the agency.

(c) The agency shall follow the minimum criteria of this part if no other agency procedures are specifically adopted.

(3) The provisions of this section do not apply to procurement of architectural, engineering, and land surveying services for projects that the department of transportation has determined are part of the design-build contracting program authorized in 60-2-137.

History: En. Sec. 4, Ch. 51, L. 1987; amd. Sec. 5, Ch. 192, L. 2003; amd. Sec. 1, Ch. 56, L. 2007; amd. Sec. 1, Ch. 188, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 56 in (3) near end after “contracting” deleted “pilot” and after “authorized in” deleted “60-2-135 through”. Amendment effective July 1, 2007.

Chapter 188 in (1) near middle of first sentence after “annually” inserted “or biennially”. Amendment effective October 1, 2007.

18-8-205. Negotiation of contract for services. (1) The agency shall negotiate a contract with the most qualified firm for architectural, engineering, and land surveying services at a price that the agency determines to be fair and reasonable. In making its determination, the agency shall take into account the estimated value of the services to be rendered, as well as the scope, complexity, and professional nature of the services.

(2) If the agency is unable to negotiate a satisfactory contract with the firm selected at a price the agency determines to be fair and reasonable, negotiations with that firm must be formally terminated and the agency shall select other firms in accordance with 18-8-204 and continue as directed in this section until an agreement is reached or the process is terminated.

(3) The provisions of this section do not apply to the negotiation of contracts for projects that the department of transportation has determined are part of the design-build contracting program authorized in 60-2-137.

History: En. Sec. 5, Ch. 51, L. 1987; amd. Sec. 6, Ch. 192, L. 2003; amd. Sec. 2, Ch. 56, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 56 in (3) near end after “contracting” deleted “pilot” and after “authorized in” deleted “60-2-135 through”. Amendment effective July 1, 2007.

18-8-206 through 18-8-209 reserved.

18-8-210. Energy performance contracts exempt. This part does not apply to solicitation and award of an investment grade energy audit or energy performance contract pursuant to Title 90, chapter 4, part 11, or to the construction or installation of conservation measures pursuant to the energy performance contract.

History: En. Sec. 12, Ch. 162, L. 2005.

18-8-211. Coordination with other statutes. (1) This part need not be complied with by an agency when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of the work involved. This part does not relieve the contracting authority from complying with applicable law limiting emergency expenditures.

(2) The limitation on the preparation of working drawings contained in 18-2-111 applies to this part.

(3) The procedure for appointment of architects and consulting engineers pursuant to 18-2-112 applies to this part, except that the agency shall select its proposed list of three architects or consulting engineers in accordance with this part prior to submission to the department of administration.

History: En. Sec. 6, Ch. 51, L. 1987; amd. Sec. 19, Ch. 443, L. 1997.

18-8-212. Exception. (1) All agencies securing architectural, engineering, and land surveying services for projects for which the fees are estimated not to exceed \$20,000 may contract for those professional services by direct negotiation.

(2) An agency may not separate service contracts or split or break projects for the purpose of circumventing the provisions of this part.

History: En. Sec. 7, Ch. 51, L. 1987; amd. Sec. 3, Ch. 22, L. 1993; amd. Sec. 7, Ch. 518, L. 1993; amd. Sec. 1, Ch. 162, L. 2003.

CHAPTER 11 STATE-TRIBAL COOPERATIVE AGREEMENTS

Part 1 General Provisions

18-11-101. Short title — purpose. (1) This chapter shall be known and may be cited as the “State-Tribal Cooperative Agreements Act”.

(2) It is the intent of the legislature that this part be used to promote cooperation between the state or a public agency and a sovereign tribal government in mutually beneficial activities and services.

(3) It is the goal of the legislature to prevent the possibility of dual taxation by governments while promoting state, local, and tribal economic development.

History: En. Sec. 1, Ch. 309, L. 1981; (2), (3) En. Sec. 1, Ch. 625, L. 1993.

18-11-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Public agency” means any political subdivision, including municipalities, counties, school districts, and any agency or department of the state of Montana.

(2) “Tribal government” means the officially recognized government of any Indian tribe, nation, or other organized group or community located in Montana exercising self-government powers and recognized as eligible for services provided by the United States to Indians because of their status as Indians.

History: En. Sec. 2, Ch. 309, L. 1981.

18-11-103. Authorization to enter agreement — general contents. (1) Any one or more public agencies may enter into an agreement with any one or more tribal governments to:

(a) perform any administrative service, activity, or undertaking that a public agency or a tribal government entering into the contract is authorized by law to perform; and

(b) assess and collect or refund any tax or license or permit fee lawfully imposed by the state or a public agency and a tribal government and to share or refund the revenue from the assessment and collection.

(2) The agreement must be authorized and approved by the governing body of each party to the agreement. If a state agency is a party to an agreement, the governor or the governor's designee is the governing body.

(3) The agreement must set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement.

(4) (a) Prior to entering into an agreement on taxation with a tribal government, a public agency shall provide public notice and hold a public meeting on the reservation whose government is a party to the proposed agreement for the purpose of receiving comments from and providing written and other information to interested persons with respect to the proposed agreement.

(b) At least 14 days but not more than 30 days prior to the date scheduled for the public meeting, a notice of the proposed agreement and public meeting must be published in a newspaper of general circulation in the county or counties in which the reservation is located.

(c) At the time the notice of the meeting is published, a synopsis of the proposed agreement must be made available to interested persons.

History: En. Sec. 3, Ch. 309, L. 1981; amd. Sec. 2, Ch. 625, L. 1993.

18-11-104. Detailed contents of agreement. (1) The agreement authorized by 18-11-103 must specify the following:

(a) its duration;

(b) the precise organization, composition, and nature of any separate legal entity created by the agreement;

(c) the purpose of the agreement;

(d) the manner of financing the agreement and establishing and maintaining a budget for the agreement;

(e) the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon partial or complete termination;

(f) provision for administering the agreement, which may include creation of a joint board responsible for administration;

(g) the manner of acquiring, holding, and disposing of real and personal property used in the agreement; and

(h) other necessary and proper matters.

(2) If an agreement involves law enforcement, it must also include:

(a) the minimum training standards and qualifications of law enforcement personnel;

(b) the respective liability of each public agency and tribal government for the actions of law enforcement officers when acting under the provisions of an agreement;

(c) the minimum insurance required of both the public agency and the tribal government; and

(d) the exact chain of command to be followed by law enforcement officers acting under the provisions of an agreement.

(3) If an agreement involves the assessment and collection or refund of a similar tax or license or permit fee by the state or a public agency and a tribal government, it must also include:

(a) the procedure for determining the amount of revenue to be shared by the state or a public agency and the tribal government;

(b) the administrative procedures for collection of the shared revenue;

(c) the minimum insurance or bonding, if any, required by the state or a public agency or the tribal government;

(d) a statement specifying the administrative expenses, if any, to be deducted pursuant to 18-11-112 by the collector of the tax or license or permit fee;

(e) a statement that the state or a public agency or the tribal government collecting the tax or license or permit fee is subject to an audit report by a mutually agreed upon auditor of the revenue collected and administrative expenses;

(f) a statement that the state or a public agency and the tribal government will cooperate to collect only one tax and will share or refund the revenue as specified in the agreement;

(g) a statement that a taxpayer may not be required to pay both the state tax and the tribal tax but shall pay only one tax to one government in an amount established in the agreement; and

(h) a statement that the parties to the agreement are not forfeiting any legal rights to apply their respective taxes by entering into an agreement, except as specifically set forth in the agreement.

History: En. Sec. 4, Ch. 309, L. 1981; amd. Sec. 3, Ch. 625, L. 1993.

18-11-105. Submission of agreement to attorney general. (1) As a condition precedent to an agreement made under this chapter becoming effective, it must have the approval of the attorney general of Montana.

(2) The attorney general shall approve an agreement submitted to him under this chapter unless he finds it is not in proper form or does not meet the requirements set forth in this chapter or otherwise does not conform to the laws of Montana. If he disapproves an agreement, he shall provide a detailed, written statement to the governing bodies of the public agency and tribal government concerned, specifying the reasons for his disapproval.

(3) If the attorney general does not disapprove the agreement within 30 days after its submission to him, it shall be considered approved by him.

History: En. Sec. 5, Ch. 309, L. 1981.

18-11-106. Repealed. Sec. 2, Ch. 38, L. 1985.

History: En. Sec. 6, Ch. 309, L. 1981.

18-11-107. Filing of agreement. (1) Within 60 days after approval by the attorney general and signature of the parties, an agreement made pursuant to this chapter must be filed with:

(a) the regional office of the bureau of Indian affairs of the United States department of the interior having trust responsibility for the tribe that is party to the agreement or its successor agency;

(b) each county clerk and recorder of each county where the principal office of one of the parties to the agreement is located, except as provided in (2) of this section;

(c) the secretary of state; and

(d) the affected tribal government.

(2) If a party to the agreement is a state agency, the agreement need not be filed with the county clerk and recorder for Lewis and Clark County.

History: En. Sec. 7, Ch. 309, L. 1981; amd. Sec. 1, Ch. 38, L. 1985; amd. Sec. 1, Ch. 54, L. 2001.

18-11-108. Revocation of agreement. An agreement made pursuant to this chapter is subject to revocation by any party upon 6 months' notice to the other unless a different notice period of time is provided for within the agreement. No agreement may provide for a notice period for revocation in excess of 5 years.

History: En. Sec. 8, Ch. 309, L. 1981.

18-11-109. Authorization to appropriate funds for purpose of agreement. Any public agency entering into an agreement pursuant to this chapter may appropriate funds for and may sell, lease, or otherwise give or supply material to any entity created for the purpose of performance of the agreement and may provide such personnel or services therefor as is within its legal power to furnish.

History: En. Sec. 9, Ch. 309, L. 1981.

18-11-110. Specific limitations on agreements. Nothing in this chapter may be construed to authorize an agreement that:

(1) is not permitted by federal law. However, the parties are encouraged to deal with substantive matters and enforcement matters that can be mutually agreed upon, but no such agreement may be considered to affect the underlying jurisdictional authority of any party unless expressly authorized by congress.

(2) authorizes a public agency or tribal government, either separately or pursuant to agreement, to expand or diminish the jurisdiction presently exercised by the government of the United States to make criminal laws for or enforce criminal laws in Indian country; or

(3) authorizes a public agency or tribal government to enter into an agreement except as authorized by their own organizational documents or enabling laws.

History: En. Sec. 10, Ch. 309, L. 1981; amd. Sec. 1, Ch. 81, L. 1985.

18-11-111. Repealed. Sec. 2, Ch. 54, L. 2001.

History: En. Sec. 11, Ch. 309, L. 1981.

18-11-112. Revenue account — administrative account — distribution of revenue.

(1) The revenue collected by the state, a public agency, or a tribal government under a state-tribal cooperative agreement and the administrative expenses, if any, deducted under subsection (2) from the total revenue collected must be deposited in separate special revenue accounts.

(2) Administrative expenses deducted by the state, a public agency, or a tribal government for collection of revenue may not exceed the actual cost of collecting the revenue on a reservation or 5%, whichever is less. Money from an administrative account may be expended only for the purpose of administering the tax or fee imposed under the state-tribal cooperative agreement or for paying the costs incurred in terminating the agreement.

(3) Except for administrative expenses, if any, deducted under subsection (2), revenue collected by a public agency under a state-tribal agreement must be deposited in separate special revenue accounts and must be disbursed as provided for in the agreement. If a public agency that is a party to an agreement is a local government, the agreement must provide for the disposition of revenue.

(4) Money deposited in a state administrative expenses account and in a state special revenue account is statutorily appropriated, as provided in 17-7-502, to the department or public agency that is a party to a state-tribal cooperative agreement under 18-11-103, for the purpose of paying administrative expenses or paying to a tribe its portion of the tax or fee.

(5) If a tax or license or permit fee is collected or refunded pursuant to a state-tribal cooperative agreement, each party must receive its share as provided in the agreement, notwithstanding any contrary state statutory, public agency ordinance, or tribal ordinance distribution formula. For distribution of the remainder, the state statutory, public agency, or tribal distribution formula must apply as if the amount remaining after each party to the agreement receives its share were the total revenue collected from the tax or license or permit fee.

History: En. Sec. 4, Ch. 625, L. 1993.

TITLE 19

PUBLIC RETIREMENT SYSTEMS

CHAPTER 1

SOCIAL SECURITY

Part 1

General Provisions

19-1-101. Declaration of policy. In order to extend to employees of the state and its political subdivisions, including employees of the state and its political subdivisions who are members of the public employees' retirement system of the state of Montana, and to the dependents and survivors of such employees the basic protection accorded to others by the old age and survivors' insurance system embodied in the Social Security Act, it is hereby declared to be the policy of the legislature, subject to the limitations of this chapter, that such steps be taken as to provide such protection to employees of the state and its political subdivisions on as broad a basis as is permitted under the Social Security Act. It is also the policy of the legislature that the protection afforded employees in positions covered by the public employees' retirement system of the state of Montana on the date an agreement under this chapter is made applicable to service performed in such positions or receiving periodic benefits under such retirement system at such time will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

History: En. Sec. 1, Ch. 44, L. 1953; amd. Sec. 1, Ch. 270, L. 1955; R.C.M. 1947, 59-1101.

19-1-102. Definitions. For the purposes of this chapter, the following definitions apply:

(1) “Employee” means an elective or appointive officer or employee of the state or a political subdivision of the state.

(2) “Employee tax” means the tax imposed by section 3101 of the Internal Revenue Code, 26 U.S.C. 3101, as amended.

(3) (a) “Employment” means any service performed by an employee in the employ of the state or any political subdivision of the state for the employer, except:

(i) service that in the absence of an agreement entered into under this chapter would constitute employment as defined in the Social Security Act; or

(ii) service that under the Social Security Act may not be included in an agreement between the state and the secretary of health and human services entered into under this chapter.

(b) Service performed by civilian employees of national guard units is specifically included within the term employment.

(c) Service that under the Social Security Act may be included in an agreement only upon certification by the governor in accordance with section 218(d)(3) of that act is included in the term employment if and when the governor issues, with respect to the service, a certificate to the secretary of health and human services pursuant to 19-1-304.

(4) “Federal Insurance Contributions Act” means subchapters A and B of chapter 21 of the Internal Revenue Code.

(5) “Political subdivision” means an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, including leagues or associations, but only if the instrumentality is a legally constituted entity that is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to the entity employees of the state or subdivision. The term includes special districts or authorities created by the legislature or local governments, including but not limited to school districts and housing authorities.

(6) “Secretary of health and human services” means the secretary of the United States department of health and human services. The term includes any individual to whom the secretary of health and human services has delegated any functions under the Social Security Act with respect to coverage under that act of employees of states and their political subdivisions and, with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom the administrator had delegated any function.

(7) “Social Security Act” means the act of congress approved August 14, 1935, chapter 531, 49 Stat. 620, officially cited as the “Social Security Act”, including regulations and requirements issued pursuant to the act, as the act has been and may be amended.

(8) “State agency” means the department of administration provided for in 2-15-1001.

(9) “Wages” means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash, except that the term does not include that part of remuneration that, even if it were for employment within the meaning of the Federal Insurance Contributions Act, would not constitute wages within the meaning of that act.

History: En. Sec. 2, Ch. 44, L. 1953; amd. Sec. 2, Ch. 270, L. 1955; amd. Sec. 1, Ch. 64, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 59-1102; amd. Sec. 32, Ch. 10, L. 1993; amd. Sec. 1, Ch. 58, L. 1999; amd. Sec. 47, Ch. 114, L. 2003.

19-1-103. Exclusions. This chapter shall not apply to and there shall be excluded from the operation thereof all employees of the state and of the political subdivisions thereof operating under the provisions of any retirement plan for firefighters.

History: En. Sec. 8, Ch. 44, L. 1953; amd. and redes. as Sec. 10, Ch. 44, L. 1953 by Sec. 10, Ch. 270, L. 1955; amd. Sec. 3, Ch. 97, L. 1959; amd. Sec. 1, Ch. 122, L. 1974; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 59-1108.

19-1-104. Retirement systems to be considered separate. (1) Pursuant to section 218(d)(6) of the Social Security Act (42 U.S.C. 418(d)(6)), the public employees’ retirement system of the state of Montana is, for the purposes of this chapter, considered a separate retirement system with respect to the state and a separate retirement system with respect to each political subdivision having positions covered by the system.

(2) Pursuant to section 218(l)(1) of the Social Security Act (42 U.S.C. 418(l)(1)), the Montana judges’ retirement system, the sheriffs’ retirement system, the Montana state game wardens’ and peace officers’ retirement system, the highway patrol officers’ retirement system of the state

of Montana, the public employees' retirement system of the state of Montana, and each municipal police retirement fund and each city participating in the municipal police officers' retirement system are, for the purposes of this chapter, considered separate retirement systems with respect to the state and separate retirement systems with respect to each political subdivision having positions covered by those systems.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(1); amd. Sec. 2, Ch. 114, L. 1979; amd. Sec. 1, Ch. 264, L. 1981; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 101, Ch. 42, L. 1997; amd. Sec. 12, Ch. 223, L. 1997.

Part 2 Administration

19-1-201. State agency to make rules. The state agency shall make and publish such rules, not inconsistent with the provisions of this chapter, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this chapter.

History: En. Sec. 7, Ch. 44, L. 1953; amd. and reded. as Sec. 9, Ch. 44, L. 1953 by Sec. 9, Ch. 270, L. 1955; R.C.M. 1947, 59-1107.

19-1-202. Costs of administration. All costs allocable to the administration of this chapter must be charged to the state agency.

History: En. Sec. 6, Ch. 44, L. 1953; amd. and reded. as Sec. 8, Ch. 44, L. 1953 by Sec. 8, Ch. 270, L. 1955; amd. Sec. 5, Ch. 248, L. 1965; amd. Sec. 2, Ch. 109, L. 1967; amd. Sec. 5, Ch. 64, L. 1977; R.C.M. 1947, 59-1106; amd. Sec. 1, Ch. 282, L. 1983; amd. Sec. 3, Ch. 412, L. 1995; amd. Sec. 2, Ch. 58, L. 1999.

Part 3 Referendum and Certification

19-1-301. Authorization of referendum by governor. With respect to members of the public employees', highway patrol officers', judges', and game wardens' and peace officers' retirement systems, the governor is empowered to authorize a referendum, and with respect to the employees of any political subdivision, he shall authorize a referendum upon the request of the governing body of the subdivision.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(2); amd. Sec. 2, Ch. 264, L. 1981; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 12, Ch. 223, L. 1997.

19-1-302. Conduct of referendum. In either case, the referendum shall be conducted and the governor shall designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the Social Security Act (42 U.S.C. 418(d)(3)), on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under this chapter.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(3).

19-1-303. Notice of referendum. The notice of referendum required by section 218(d)(3)(C) of the Social Security Act (42 U.S.C. 418(d)(3)(C)) to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum considers necessary and sufficient, informing the employees of the rights which will accrue to them and their dependents and survivors and the liabilities to which they will be subject if their services are included under an agreement under this chapter.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(4).

19-1-304. Certification by governor. Upon receiving satisfactory evidence that with respect to a referendum the conditions specified in section 218(d)(3) of the Social Security Act (42 U.S.C. 418(d)(3)) have been met, the governor shall certify the results of the referendum to the secretary of health and human services.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(5); amd. Sec. 33, Ch. 10, L. 1993.

Part 4

Federal-State Agreement

19-1-401. Authority for federal-state agreement. The state agency, with the approval of the governor, may enter, on behalf of the state, into an agreement with the secretary of health and human services, consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old age and survivors' insurance system to employees of the state or any political subdivision of the state with respect to services specified in the agreement that constitute "employment", as defined in 19-1-102.

History: En. Sec. 3, Ch. 44, L. 1953; amd. and reded. as Sec. 4, Ch. 44, L. 1953 by Sec. 4, Ch. 270, L. 1955; amd. Sec. 1, Ch. 97, L. 1959; R.C.M. 1947, 59-1103(part); amd. Sec. 34, Ch. 10, L. 1993.

19-1-402. Contents of federal-state agreement. The agreement authorized by 19-1-401 may contain provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the state agency and secretary of health and human services shall agree upon, but, except as may be otherwise required or permitted by or under the Social Security Act as to the services to be covered, the agreement must provide in effect that:

(1) benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though the services constituted employment within the meaning of Title II of the Social Security Act;

(2) the state will pay to the secretary of the treasury of the United States, at a time or times as may be prescribed under the Social Security Act, contributions with respect to wages equal to the sum of the taxes that would be imposed by the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act;

(3) the agreement must be effective with respect to services in employment covered by the agreement performed after a date specified in the agreement, but may not be effective with respect to services performed prior to the first day of the calendar year in which the agreement is entered into or in which the modification of the agreement making it applicable to services is entered into, except that the effective date may be made retroactive to the extent permitted by section 218(e) of the Social Security Act (42 U.S.C. 418(e));

(4) all services that constitute employment and are performed in the employ of the state by employees of the state must be covered by the agreement; and

(5) all services that constitute employment, are performed in the employ of a political subdivision of the state, and are covered by a plan that is in conformity with the terms of the agreement and that has been approved by the state agency under part 5 must be covered by the agreement.

History: En. Sec. 3, Ch. 44, L. 1953; amd. and reded. as Sec. 4, Ch. 44, L. 1953 by Sec. 4, Ch. 270, L. 1955; amd. Sec. 1, Ch. 97, L. 1959; R.C.M. 1947, 59-1103(part); amd. Sec. 35, Ch. 10, L. 1993; amd. Sec. 102, Ch. 42, L. 1997.

Part 5

Plans for Employees of Political Subdivisions

19-1-501. Submission of plan. Each political subdivision of the state shall submit for approval by the state agency a plan for extending the benefits of Title II of the Social Security Act, in conformity with applicable provisions of such act, to employees of such political subdivision.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and reded. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(part).

19-1-502. Approval of plan by state agency. (1) A plan and any amendment thereof shall be approved by the state agency if it finds that the plan or the plan as amended is in conformity with such requirements as are provided in regulations of the state agency.

(2) The state agency may not finally refuse to approve a plan submitted by a political subdivision under 19-1-501 and may not terminate an approved plan without reasonable notice and opportunity for hearing to the political subdivision affected thereby.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and reded. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(part).

19-1-503. Required provisions of plan. A plan may not be approved unless:

(1) it is in conformity with the requirements of the Social Security Act and with the agreement entered into under 19-1-401 and 19-1-402;

(2) it provides that all services that constitute employment and that are performed in the employ of the political subdivisions by employees of the political subdivisions will be covered by the plan, except that it may exclude services performed by individuals to whom section 218 (c)(3)(B) of the Social Security Act (42 U.S.C. 418(c)(3)(B)) is applicable;

(3) it specifies the sources from which the funds necessary to make the payments required by 19-1-704 and 19-1-706 are expected to be derived and contains reasonable assurance that the sources will be adequate to make the payments;

(4) it provides for methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan;

(5) it provides that the political subdivision will make reports, in a form and containing information, as the state agency may require and will comply with the provisions that the state agency or the secretary of health and human services finds necessary to ensure the correctness and verification of the reports;

(6) it authorizes the state agency, in its discretion, to terminate the plan in its entirety if it finds that there has been a failure to comply substantially with any provision contained in the plan. The termination is to take effect at the expiration of any notice and on conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the Social Security Act.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and reded. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(2); amd. Sec. 36, Ch. 10, L. 1993; amd. Sec. 103, Ch. 42, L. 1997.

Part 6

Contribution Account

19-1-601. Establishment of contribution account. There is hereby established, in place of the fund known as the contribution fund, an agency account for the social security program in the agency fund to be known as the contribution account.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and reded. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(1).

19-1-602. Management of account. (1) All money in the account must be mingled and undivided.

(2) Subject to the provisions of this chapter, the state agency has full power, authority, and jurisdiction over the account, including all money and property or securities belonging to the account. The state agency may perform any acts, whether or not specifically designated, that are necessary to the administration of the account and that are consistent with the provisions of this chapter.

(3) The board of investments shall invest the account as part of the unified investment program described in Title 17, chapter 6, part 2. The state agency shall credit all interest and income earned on the account in excess of that which, in its judgment, may be needed for the purposes set forth in 19-1-603 to the state general fund.

(4) By the end of the fiscal year during which all payments determined to be due and payable from the state to the social security administration and the state agency's administrative expenses necessary to administer this chapter have been paid, the state agency shall transfer any funds remaining in the contribution account to the state general fund.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and reded. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(3); amd. Sec. 3, Ch. 264, L. 1981; amd. Sec. 1, Ch. 4, Sp. L. June 1986; amd. Sec. 4, Ch. 412, L. 1995; amd. Sec. 3, Ch. 58, L. 1999.

19-1-603. Limit on use of account. The contribution account shall be used and administered exclusively for the purpose of this chapter. Subject to the provisions of 19-1-602,

withdrawals from the account shall be made solely for payment of amounts required to be paid to the secretary of the treasury of the United States pursuant to an agreement entered into under 19-1-401 and 19-1-402, payment of refunds provided for in 19-1-702, and refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and reded. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(4).

19-1-604. Payments from account. (1) From the contribution account the custodian of the account shall pay to the secretary of the treasury of the United States such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under 19-1-401, 19-1-402, and the Social Security Act.

(2) The treasurer of the state shall pay all warrants drawn upon the state agency in accordance with the provisions of this part and with such regulations as the state agency may prescribe pursuant thereto.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and reded. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(5).

Part 7 Payments into Contribution Account

19-1-701. Sources of funds in account. The contribution account shall consist of and there shall be deposited in such account:

(1) all contributions, interest, and penalties collected under 19-1-702 and 19-1-704 through 19-1-706;

(2) all moneys appropriated thereto by the legislature of the state of Montana;

(3) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the account; and

(4) all other moneys received for the account from any other source.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and reded. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(2).

19-1-702. Contributions by state employees. (1) Every employee of the state whose services are covered by an agreement entered into under 19-1-401 and 19-1-402 shall be required to pay, for the period of such coverage, contributions with respect to wages (as defined in 19-1-102) equal to the amount of employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service of the state, or his entry upon such service, after February 20, 1953.

(2) The contribution imposed by this section shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

(3) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments or refund if adjustment is impracticable shall be made, without interest, in such manner and at such times as the state agency shall prescribe.

History: En. as Sec. 5, Ch. 44, L. 1953 by Sec. 5, Ch. 270, L. 1955; amd. Sec. 198, Ch. 147, L. 1963; R.C.M. 1947, 59-1103.1.

19-1-703. Budgeting by state departments. Each department of the state shall include in its operating budget for the next succeeding fiscal year, prepared and delivered to the department of administration in accordance with the provisions of law, an estimate of the amount which it will be required to contribute to the contribution account.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and reded. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(6).

19-1-704. Contribution by political subdivision. Each political subdivision as to which a plan has been approved under part 5 of this chapter shall pay, at such time or times as the state

agency may prescribe by regulation, contributions with respect to wages (as defined in 19-1-102) in the amounts and at the rates specified in the applicable agreement entered into by the state agency under 19-1-401 and 19-1-402.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(4)(a).

19-1-705. Deduction of employee contribution by political subdivision. (1) Each political subdivision required to make payment under 19-1-704 shall, in consideration of the employee's retention in or entry upon employment after February 20, 1953, impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages (as defined in 19-1-102), not exceeding the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act and shall deduct the amount of such contributions from his wages as and when paid.

(2) Contributions so collected partially discharge the liability of the political subdivision or instrumentality under 19-1-704. Failure to deduct the contribution does not relieve the employee or employer of liability therefor.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(4)(b).

19-1-706. Collection of delinquent payments from political subdivision. (1) The purpose of this section is to encourage compliance with the federal deposit and reporting procedures, not to produce revenue. Therefore, the state agency may waive part or all of the interest penalty when, in the opinion of the board, a reasonable explanation has been submitted in writing by the political subdivision.

(2) Delinquent payments due under 19-1-704 may, with interest at the rate of 9% a year, or \$10 per day, whichever is greater, be recovered by action in a court of competent jurisdiction against the political subdivision liable therefor or may, at the request of the state agency, be deducted from any other moneys payable to the subdivision by any department, agency, or fund of the state.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(5); amd. Sec. 4, Ch. 264, L. 1981.

Part 8

Participation of Teachers

19-1-801. Purpose — general repeal. All acts and parts of acts in conflict herewith are hereby repealed to the extent of any such conflict, it being the purpose of this part to bring under the provisions of parts 1 through 7 of this chapter or any act amendatory thereof teachers and staff members of districts and institutions of higher education for supplemental social security coverage as provided by the federal Social Security Act.

History: En. Sec. 5, Ch. 271, L. 1955; R.C.M. 1947, 59-1113.

19-1-802. No effect on rights under other laws. Nothing in this part may be construed to prejudice or otherwise affect any rights, benefits, or privileges heretofore accrued under any other law of this state. It is the intent of this legislation to permit supplementation of present retirement benefits under existing law with social security benefits. It is also the intent to permit teachers and staff in any district or institution of higher education so electing to become members of more than one retirement system, to receive credit under more than one system for the same service, and to receive benefits from more than one system. No benefits received under either system may be deducted from any other or separate system.

History: En. Sec. 4, Ch. 271, L. 1955; amd. Sec. 9, Ch. 64, L. 1977; R.C.M. 1947, 59-1112.

19-1-803 through 19-1-810 reserved.

19-1-811. Referendum by school district. A school district of the state may, upon the approval thereof being voted by the board of trustees, conduct and supervise a referendum, pursuant to section 218 of the federal Social Security Act (42 U.S.C. 418), among the members of

the staff and teachers of the school or schools under the jurisdiction of the board of trustees. If the majority of votes cast in the referendum indicates that the staff and teachers approve, then the board of trustees shall certify to the department of administration that the conditions for coverage by social security, required by section 218 of the Social Security Act, have been complied with.

History: En. Sec. 1, Ch. 271, L. 1955; amd. Sec. 20, Ch. 391, L. 1973; amd. Sec. 6, Ch. 64, L. 1977; R.C.M. 1947, 59-1109.

19-1-812. Eligibility of staff and teachers. Upon the certification provided for in 19-1-811, the staff and teachers of the district are eligible for coverage under the provisions of the federal Social Security Act.

History: En. Sec. 2, Ch. 271, L. 1955; amd. Sec. 1, Ch. 253, L. 1965; amd. Sec. 21, Ch. 391, L. 1973; amd. Sec. 7, Ch. 64, L. 1977; R.C.M. 1947, 59-1110(1).

19-1-813. Collection of contributions. The fiscal officer of the district shall thereafter collect the contributions required under the federal Social Security Act, section 218 (42 U.S.C. 418), from the staff and teachers by payroll deduction and from the school district as employer. The funds collected shall be deposited with the department of administration and held in the contribution account as provided by parts 1 through 7 of this chapter.

History: En. Sec. 2, Ch. 271, L. 1955; amd. Sec. 1, Ch. 253, L. 1965; amd. Sec. 21, Ch. 391, L. 1973; amd. Sec. 7, Ch. 64, L. 1977; R.C.M. 1947, 59-1110(2).

19-1-814. District's contribution to be first obligation. For the purposes of this part, the contributions with respect to services equivalent to the employer's tax established by the federal Social Security Act are the first obligation against any state funds received for school support by any school district, high school district, or county high school and shall be paid therefrom before any other expenditure.

History: En. Sec. 2, Ch. 271, L. 1955; amd. Sec. 1, Ch. 253, L. 1965; amd. Sec. 21, Ch. 391, L. 1973; amd. Sec. 7, Ch. 64, L. 1977; R.C.M. 1947, 59-1110(3).

19-1-815. Merger of reporting entities. If the approval of referenda at different times results in the establishment of two separate social security reporting entities for a high school district and an elementary school district and the high school building is located in the elementary school district, the state agency shall, upon request of the boards of trustees in both districts, merge the two reporting entities to form a single reporting entity if the elementary school district and high school district:

(1) have boards of trustees of which a majority of each board is composed of the same persons;

(2) are administered by the same executive officer; and

(3) have payroll calculations made in the same payroll application.

History: En. Sec. 1, Ch. 350, L. 1983.

19-1-816 through 19-1-820 reserved.

19-1-821. Retirement system to be considered separate for each institution. For the purposes of this part, the teachers' retirement system of the state of Montana is considered a separate retirement system with respect to each state institution of higher education in Montana, and each institution and the teachers therein shall be treated separately and independently from the other institutions and teachers.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(1).

19-1-822. Referendum — institution of higher education. On request of the president of an institution, the governor shall designate an agency or individual to give notice of and supervise a referendum in the retirement system for that institution in compliance with the requirements prescribed by section 218 of the Social Security Act (42 U.S.C. 418).

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(2).

19-1-823. Certification by governor. If the majority of votes cast in the referendum indicates that the majority of voters desire it, the governor shall certify to the secretary of health and human services that the conditions set forth in section 218 of the Social Security Act (42 U.S.C. 418) have been complied with in respect to the retirement system voting in the referendum.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(3); amd. Sec. 37, Ch. 10, L. 1993.

19-1-824. Federal-state agreement. Upon certification, the governor shall designate an official to enter into an agreement or a modification or supplement to an existing agreement or both a modification and a supplement with the appropriate officers of the federal government, pursuant to section 218 of the Social Security Act (42 U.S.C. 418), to secure coverage thereunder for the retirement system with respect to which certification has been made. An agreement may be made retroactive to the extent permissible under the Social Security Act.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(4).

19-1-825. Collection of contributions. (1) The fiscal officer for an institution for whose retirement system an agreement has been made shall collect the contributions required by section 218, as follows:

(a) from the teachers in the retirement system of that institution, by payroll deductions; and

(b) from the state, from any appropriations to the institution involved for salaries or other purposes.

(2) In the absence of a specific provision in the appropriations for or budget of an institution for such contributions, the board of regents of higher education shall designate the funds from which the required contributions will be made and the budgetary items to which they will be allocated.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(5), (6).

19-1-826. Changes in federal law. In the event that any relevant provisions of federal law are amended or superseded, then the provisions hereof which relate to such law shall be applied to the amended law or the superseding law.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(7).

CHAPTER 2 PUBLIC EMPLOYEES' RETIREMENT GENERAL PROVISIONS

Part 3 General Provisions

19-2-301. Short title. This chapter may be cited as "The Public Employees' Retirement Act".

History: En. Sec. 1, Ch. 265, L. 1993.

19-2-302. Applicability. Except as otherwise provided in this title, this chapter applies to the provisions and administration of the retirement systems and plans within the systems under chapters 3, 5 through 9, and 13 of this title.

History: En. Sec. 2, Ch. 265, L. 1993; amd. Sec. 4, Ch. 471, L. 1999.

19-2-303. Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.

(8) "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

(9) "Benefit" means:

(a) the service retirement benefit, early retirement benefit, or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or

(b) a payment or distribution under the defined contribution retirement plan, including a disability payment under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.

(12) "Covered employment" means employment in a covered position.

(13) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

(14) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

(15) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.

(16) "Department" means the department of administration.

(17) "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(18) "Disability" or "disabled" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(19) "Early retirement benefit" means the retirement benefit payable to a member following early retirement and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.

(20) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.

(21) "Employer" means a governmental agency participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.

(22) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

(23) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(24) "Inactive member" means a member who terminates service and does not retire or take a refund of the member's accumulated contributions.

(25) "Internal Revenue Code" has the meaning provided in 15-30-101.

(26) "Member" means either:

(a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or

(b) a person with a retirement account in the defined contribution plan.

(27) "Membership service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(28) (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future.

(b) Normal cost does not include any portion of the supplemental costs of a retirement plan.

(29) "Normal retirement age" means the age at which a member is eligible to immediately receive a retirement benefit based on the member's age, length of service, or both, as specified under the member's retirement system, without disability and without an actuarial or similar reduction in the benefit.

(30) "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

(31) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

(32) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 and that is adjusted by the board pursuant to 19-3-2121 to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan.

(33) "Regular contributions" means contributions required from members under a retirement plan.

(34) "Regular interest" means interest at rates set from time to time by the board.

(35) "Retirement" or "retired" means the status of a member who has:

(a) terminated from service; and

(b) received and accepted a retirement benefit from a retirement plan.

(36) "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and member contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

(37) "Retirement benefit" means:

(a) in the case of a defined benefit plan, the periodic benefit payable as a result of service retirement, early retirement, or disability retirement under a defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.

(b) in the case of the defined contribution plan, a benefit as defined in subsection (9)(b).

(38) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.

(39) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

(40) "Service" means employment of an employee in a position covered by a retirement system.

(41) "Service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined benefit retirement plan.

(42) "Service retirement benefit" means the retirement benefit that the member may receive at normal retirement age.

(43) “Statutory beneficiary” means the surviving spouse or dependent child or children of a member of the highway patrol officers’, municipal police officers’, or firefighters’ unified retirement system who are statutorily designated to receive benefits upon the death of the member.

(44) “Supplemental cost” means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

(45) “Survivorship benefit” means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

(46) “Termination of employment”, “termination from employment”, “terminated employment”, “terminated from employment”, “terminate employment”, or “terminates employment” means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both; and

(b) the member is no longer receiving compensation for covered employment, other than any outstanding lump-sum payment for compensatory leave, sick leave, or annual leave.

(47) “Termination of service”, “termination from service”, “terminated from service”, “terminated service”, “terminating service”, or “terminates service” means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both for at least 30 days;

(b) the member is no longer receiving compensation for covered employment; and

(c) the member has been paid all compensation for compensatory leave, sick leave, or annual leave to which the member was entitled. For the purposes of this subsection (47), compensation does not mean compensation as a result of a legal action, court order, or settlement to which the board was not a party.

(48) “Unfunded actuarial liabilities” or “unfunded liabilities” means the excess of a defined benefit retirement plan’s actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

(49) “Vested account” means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member’s beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts:

(a) the member’s contribution account;

(b) the vested portion of the employer’s contribution account; and

(c) the member’s account for other contributions.

(50) “Vested member” or “vested” means:

(a) with respect to a defined benefit plan, a member or the status of a member who has at least 5 years of membership service; or

(b) with respect to the defined contribution plan, a member or the status of a member who meets the minimum membership service requirement of 19-3-2116.

(51) “Written application” or “written election” means a written instrument, prescribed by the board or required by law, properly signed and filed with the board, that contains all required information, including documentation that the board considers necessary.

History: En. 68-1503 by Sec. 4, Ch. 323, L. 1973; amd. Sec. 1, Ch. 190, L. 1974; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 8, Ch. 332, L. 1977; R.C.M. 1947, 68-1503; amd. Sec. 3, Ch. 114, L. 1979; amd. Sec. 1, Ch. 496, L. 1981; amd. Sec. 2, Ch. 282, L. 1983; amd. Sec. 1, Ch. 45, L. 1987; amd. Sec. 2, Ch. 71, L. 1989; amd. Sec. 3, Ch. 265, L. 1993; Sec. 19-3-104, MCA 1991; redes. 19-2-303 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 5, Ch. 412, L. 1995; amd. Sec. 5, Ch. 370, L. 1997; amd. Secs. 4, 46(1), Ch. 58, L. 1999; amd. Sec. 5, Ch. 471, L. 1999; amd. Secs. 4, 99(1)(b), Ch. 562, L. 1999; amd. Sec. 4, Ch. 99, L. 2001; amd. Sec. 1, Ch. 149, L. 2001; amd. Sec. 3, Ch. 423, L. 2001; amd. Sec. 1, Ch. 490, L. 2001; amd. Sec. 48, Ch. 114, L. 2003; amd. Sec. 3, Ch. 429, L. 2003; amd. Sec. 1, Ch. 329, L. 2005.

Part 4 Administration

19-2-401. Location of board — jurisdiction and venue for judicial review — quorum — officers and employees. (1) The board shall maintain its office in the city of Helena. Jurisdiction and venue for judicial review of final administrative decisions of the board are in the first judicial district, Lewis and Clark County, unless otherwise stipulated by the parties.

(2) A quorum of the board is four members.

(3) The board shall elect one of its members presiding officer. The board may appoint a committee of one or more of its members to perform routine acts, such as retirement of members and fixing of retirement benefits, approval of death claims, and correction of records necessary in the administration of the systems in accordance with the provisions of chapters 2, 3, 5 through 9, 13, 17, and 50 of this title and in accordance with the rules of the board. The attorney general is the legal counsel for the board.

History: En. 68-1801 by Sec. 18, Ch. 323, L. 1973; R.C.M. 1947, 68-1801; amd. Sec. 4, Ch. 265, L. 1993; Sec. 19-3-301, MCA 1991; redes. 19-2-401 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 6, Ch. 412, L. 1995; amd. Sec. 6, Ch. 471, L. 1999; amd. Sec. 2, Ch. 490, L. 2001.

19-2-402. Compensation of board members. Members shall be entitled to compensation as provided in 2-15-124.

History: En. 68-1802 by Sec. 19, Ch. 323, L. 1973; amd. Sec. 15, Ch. 453, L. 1977; R.C.M. 1947, 68-1802(part); amd. Sec. 2, Ch. 672, L. 1983; amd. Sec. 5, Ch. 650, L. 1985; Sec. 19-3-302, MCA 1991; redes. 19-2-402 by Sec. 238, Ch. 265, L. 1993.

19-2-403. Powers and duties of board. (1) The board shall administer the provisions of the chapters enumerated in 19-2-302.

(2) The board may establish rules that it considers proper for the administration and operation of the retirement systems and enforcement of the chapters under which each retirement system is established.

(3) The board shall establish uniform rules that are necessary to determine service credit for fractional years of service.

(4) The board shall determine who are employees within the meaning of each retirement system. The board is the sole authority for determining the conditions under which persons may become members of and receive benefits under the retirement systems.

(5) The board shall determine and may modify retirement benefits under the retirement systems. Benefits may be paid only if the board decides, in its discretion, that the applicant is, under the provisions of the appropriate retirement system, entitled to the benefits.

(6) In matters of board discretion under the systems, the board shall treat all persons in similar circumstances in a uniform and nondiscriminatory manner.

(7) The board shall maintain records and accounts it determines necessary for the administration of the retirement systems.

(8) Upon the basis of the findings of the actuary pursuant to 19-2-405, the board shall adopt actuarial rates and rates of regular interest it determines appropriate for the administration of the retirement systems.

(9) The board shall review the sufficiency of benefits paid by the retirement system or plan and recommend to the legislature those changes in benefits in a defined benefit plan or in contributions under the defined contribution plan that may be necessary for members and their beneficiaries to maintain a stable standard of living.

(10) The board may implement third-party mailings under the provisions of 2-6-109. If third-party mailings are implemented, the board shall adopt rules governing means of implementation, including the specification of eligible third parties, appropriate materials, and applicable fees and procedures. Fees generated by third-party mailings must be deposited in the appropriate retirement system fund for the benefit of participants of retirement systems or plans administered by the board.

(11) In discharging duties, the board, a member of the board, or an authorized representative of the board may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of

witnesses and the production of books, papers, correspondence, memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104 of the Montana Administrative Procedure Act.

(12) The board may by rule or otherwise delegate to the board's executive director or any other staff member any of the powers or duties conferred by law upon the board except as otherwise provided by law and except for the adoption of rules and the issuance of final orders after hearings held pursuant to subsection (11) or the contested case procedure of the Montana Administrative Procedure Act.

(13) The board shall perform other duties and may exercise the powers concerning the defined contribution plan for plan members as provided in chapter 3, part 21, of this title.

History: En. 68-1803 by Sec. 20, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 9, Ch. 332, L. 1977; R.C.M. 1947, 68-1803(1); amd. Sec. 5, Ch. 265, L. 1993; amd. Sec. 1, Ch. 481, L. 1993; Sec. 19-3-304, MCA 1991; redes. 19-2-403 by Sec. 238, Ch. 265, L. 1993; (10)En. Sec. 2, Ch. 412, L. 1995; amd. Sec. 7, Ch. 471, L. 1999; amd. Sec. 5, Ch. 562, L. 1999; amd. Sec. 5, Ch. 99, L. 2001; amd. Sec. 4, Ch. 429, L. 2003.

19-2-404. Appointment and compensation of administrative staff. The board shall hire and fix the compensation of an executive director and other necessary employees to assist the board in administering the retirement systems. The compensation of the executive director and employees must be established in accordance with Title 2, chapter 18.

History: En. Sec. 6, Ch. 265, L. 1993; amd. Sec. 17, Ch. 532, L. 1997; amd. Sec. 6, Ch. 562, L. 1999.

19-2-405. Employment of actuary — annual investigation and valuation. (1) The board shall retain a competent actuary who is an enrolled member of the American academy of actuaries and who is familiar with public systems of pensions. The actuary is the technical adviser of the board on matters regarding the operation of the retirement systems.

(2) The board shall require the actuary to make an annual actuarial investigation into the suitability of the actuarial tables used by the retirement systems and an actuarial valuation of the assets and liabilities of each defined benefit plan that is a part of the retirement systems.

(3) The normal cost contribution rate, which is funded by required employee contributions and a portion of the required employer contributions to each defined benefit retirement plan, must be calculated as the level percentage of members' salaries that will actuarially fund benefits payable under a retirement plan as those benefits accrue in the future.

(4) (a) The unfunded liability contribution rate, which is entirely funded by a portion of the required employer contributions to the retirement plan, must be calculated as the level percentage of current and future defined benefit plan members' salaries that will amortize the unfunded actuarial liabilities of the retirement plan over a reasonable period of time, not to exceed 30 years, as determined by the board.

(b) In determining the amortization period under subsection (4)(a) for the public employees' retirement system's defined benefit plan, the actuary shall take into account the plan choice rate contributions to be made to the defined benefit plan pursuant to 19-3-2117 and 19-21-203.

(5) The board shall require the actuary to conduct a periodic actuarial investigation into the actuarial experience of the retirement systems and plans. Copies of the report must be provided to the legislature pursuant to 5-11-210.

(6) The board may require the actuary to conduct any valuation necessary to administer the retirement systems and the plans subject to this chapter.

History: En. 68-1804 by Sec. 21, Ch. 323, L. 1973; R.C.M. 1947, 68-1804; amd. Sec. 7, Ch. 265, L. 1993; Sec. 19-3-305, MCA 1991; redes. 19-2-405 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 8, Ch. 471, L. 1999; amd. Sec. 49, Ch. 114, L. 2003; amd. Sec. 5, Ch. 285, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 285 in (2) after "make" substituted "an annual actuarial investigation" for "a biennial actuarial investigation"; and in (5) inserted second sentence requiring copies of retirement system actuarial report to be provided to the legislature. Amendment effective June 1, 2007.

19-2-406. Determination of disability by board — compliance with federal law — conversion to service retirement benefit — rules. (1) The board shall determine whether a member has become disabled. In the discharge of its duty regarding determinations, the board, any member of the board, or any authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered

necessary as evidence in connection with a claim for disability retirement. Subpoenas must be issued and enforced pursuant to 2-4-104 of the Montana Administrative Procedure Act.

(2) The board shall adopt rules requiring employers to identify and explain the essential elements of a member's position, any accommodations that were or can be made in compliance with the Americans With Disabilities Act of 1990 (42 U.S.C. 12101, et seq.), and the effectiveness of the accommodations.

(3) The board shall retain medical personnel to advise it in assessing the nature and extent of disabling conditions while reviewing claims for disability retirement.

(4) The disability retirement benefit paid to a member of the defined benefit plan must be converted to a service retirement benefit, without recalculation of the monthly benefit amount, when the member has attained normal retirement age. The board shall notify the member in writing as to the change in status.

History: En. Sec. 1, Ch. 597, L. 1981; amd. Sec. 8, Ch. 265, L. 1993; Sec. 19-5-611, MCA 1991; reded. 19-2-406 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 7, Ch. 412, L. 1995; amd. Sec. 9, Ch. 471, L. 1999; amd. Sec. 7, Ch. 562, L. 1999; amd. Sec. 6, Ch. 99, L. 2001; amd. Sec. 4, Ch. 423, L. 2001.

19-2-407. Reports. (1) As soon as practical after the close of each fiscal year, the board shall file with the governor and with the legislature pursuant to 5-11-210 a report of its work for that fiscal year. The report must include but is not limited to:

(a) a statement as to the accumulated cash and securities in the pension trust funds as certified by the state treasurer and the board of investments;

(b) a summary of the most recent information available from the actuary concerning the actuarial valuation of the assets and liabilities of each system or plan; and

(c) an analysis of how market performance is affecting actuarial funding of each of the retirement systems or plans.

(2) The report required under subsection (1) must also provide information concerning the defined contribution plan, including a description of the plan, the number of members in the plan, plan contribution rates, the total amount of money invested by members, investment performance, administrative costs and fees, determinations on the plan choice rate made pursuant to 19-3-2121, and other information required under applicable governmental accounting standards and as determined by the board.

History: En. 68-1803 by Sec. 20, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 9, Ch. 332, L. 1977; R.C.M. 1947, 68-1803(2); amd. Sec. 9, Ch. 265, L. 1993; Sec. 19-3-306, MCA 1991; reded. 19-2-407 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 10, Ch. 471, L. 1999; amd. Sec. 8, Ch. 562, L. 1999; amd. Sec. 6, Ch. 285, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 285 in (1) in middle of first sentence inserted "and with the legislature pursuant to 5-11-210" and in second sentence inserted "but is not limited to"; in (1)(b) substituted "a summary of the most recent information available from the actuary concerning the actuarial valuation" for "the most recent unpublished report of the actuary of the actuarial valuation"; inserted (1)(c) requiring report to include an analysis of how market performance is affecting actuarial fund of retirement systems and plans; in (2) after "report" inserted "required under subsection (1)"; and made minor changes in style. Amendment effective June 1, 2007.

19-2-408. Administrative expenses. (1) The legislature finds that proper administration of the pension trust funds benefits both employers and members and continues to benefit members after retirement.

(2) (a) The administrative expenses of the retirement systems administered by the board must be paid from the investment earnings on the pension trust fund of the public employees' retirement system's defined benefit plan, except as otherwise provided in this section. The board shall compute the administrative expenses attributable to each retirement system or plan administered by the board and transfer that amount from each retirement system's or plan's pension trust fund to the pension trust fund of the public employees' retirement system's defined benefit plan in a manner that ensures that the public employees' retirement system's defined benefit plan trust fund is fully compensated for expenditures made on behalf of other systems or plans so that there is no actuarial impact on the fund.

(b) The total administrative expenses of the board, including the administration of the volunteer firefighters' pension plan, may not exceed 1.5% of the total defined benefit plan retirement benefits paid.

(3) For purposes of calculating the percentage specified in subsection (2)(b), administrative expenses do not include:

- (a) expenditures to purchase intangible assets for plan administration;
- (b) expenses of the defined contribution plan;
- (c) expenditures of funds allocated under 19-3-112(1)(b) to the education fund established in 19-3-112(1)(a); or
- (d) expenses for an actuarial valuation under 19-2-405(2) performed during the first year of a biennium.

(4) The administrative expenses of the defined contribution plan must be paid, as provided in 19-3-2105, from assets of the defined contribution plan.

History: En. 68-1904 by Sec. 25, Ch. 323, L. 1973; amd. Sec. 3, Ch. 190, L. 1974; amd. Sec. 6, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1904; amd. Sec. 2, Ch. 254, L. 1981; amd. Sec. 5, Ch. 496, L. 1981; amd. Sec. 1, Ch. 328, L. 1985; amd. Sec. 3, Ch. 4, Sp. L. June 1986; amd. Sec. 10, Ch. 265, L. 1993; Sec. 19-3-805, MCA 1991; reds. 19-2-408 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 18, Ch. 532, L. 1997; amd. Sec. 1, Ch. 286, L. 1999; amd. Sec. 11, Ch. 471, L. 1999; amd. Sec. 9, Ch. 562, L. 1999; amd. Sec. 50, Ch. 114, L. 2003; amd. Sec. 7, Ch. 285, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 285 inserted (3)(d) providing that administrative expenses do not include expenses for actuarial valuation performed during the first year of a biennium; and made minor changes in style. Amendment effective June 1, 2007.

19-2-409. Plans to be funded on actuarially sound basis — definition. As required by Article VIII, section 15, of the Montana constitution, each system must be funded on an actuarially sound basis. For purposes of this section, “actuarially sound basis” means that contributions to each retirement plan must be sufficient to pay the full actuarial cost of the plan. For a defined benefit plan, the full actuarial cost includes both the normal cost of providing benefits as they accrue in the future and the cost of amortizing unfunded liabilities over a scheduled period of no more than 30 years. For the defined contribution plan, the full actuarial cost is the contribution defined by law that is payable to an account on behalf of the member.

History: En. Sec. 5, Ch. 287, L. 1997; amd. Sec. 12, Ch. 471, L. 1999.

19-2-410. Presentation to board of investments. The board shall annually at a public meeting present to the board of investments established in 2-15-1808 a financial and actuarial report of the retirement systems administered by the board and brief the board of investments on any benefit changes being considered by the board that may affect trust fund obligations.

History: En. Sec. 2, Ch. 285, L. 2007.

Compiler's Comments

Effective Date: Section 11, Ch. 285, L. 2007, provided that this section is effective June 1, 2007.

Part 5 Management and Investment of Pension Trust Funds

19-2-501. Pension trust funds established. A pension trust fund is established and maintained for each retirement plan within a system subject to this chapter as enumerated in 19-2-302.

History: En. Sec. 11, Ch. 265, L. 1993; amd. Sec. 13, Ch. 471, L. 1999.

19-2-502. Payments from pension trust funds. (1) The board shall administer the assets of the pension trust funds as provided in Article VIII, section 15, of the Montana constitution, subject to the specific provisions of chapters 2, 3, 5 through 9, and 13 of this title.

(2) Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. The contract is entered into on the first day of a member's covered employment and may be enhanced by the legislature. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination of membership.

History: En. Sec. 12, Ch. 265, L. 1993; amd. Sec. 19, Ch. 532, L. 1997; amd. Sec. 2, Ch. 329, L. 2005.

19-2-503. Management of pension trust funds. The pension trust funds must be managed as follows:

(1) The board is the trustee of all money collected for the retirement systems and has exclusive control of the administration of the pension trust funds except as otherwise provided by law.

(2) The department shall deposit in the state treasury all amounts received by the board as provided in this chapter.

(3) Except as provided in chapter 3, part 21, of this title, the state treasurer is custodian of the pension trust funds, subject to the exclusive control of the board for administration and the board of investments for the investment of the funds.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(1), (3), (4); amd. Sec. 13, Ch. 265, L. 1993; Sec. 19-3-601, MCA 1991; redes. 19-2-503 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 14, Ch. 471, L. 1999; amd. Sec. 10, Ch. 562, L. 1999.

19-2-504. Investment of pension trust funds. (1) Except as provided in chapter 3, part 21, of this title, the pension trust funds of the retirement systems must be invested by the state board of investments as part of the unified investment program described in Title 17, chapter 6, part 2.

(2) All income earned on any assets constituting a part of the pension trust funds must be paid into the appropriate pension trust funds as received.

(3) The pension trust funds may be commingled for investment purposes, but separate accounts must be maintained for each system.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(2), (5); amd. Sec. 1, Ch. 221, L. 1991; amd. Sec. 14, Ch. 265, L. 1993; Sec. 19-3-602, MCA 1991; redes. 19-2-504 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 15, Ch. 471, L. 1999.

19-2-505. Restrictions on use of funds. (1) Except as provided in this section, a member or an employee of the board or the board of investments may not:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing from the pension trust funds;

(b) directly or indirectly, for the member or employee or as an agent or partner of others, borrow from the pension trust funds or deposits;

(c) in any manner use the pension trust funds except to make current and necessary payments that are authorized by the board;

(d) become an endorser or surety as to or in any manner an obligor for investments for the pension trust funds; or

(e) engage in a transaction prohibited by section 503(b) of the Internal Revenue Code.

(2) The assets of the retirement systems, including the assets of retirement accounts, may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable administrative expenses of the retirement systems administered by the board.

(3) The assets of the retirement systems remain in trust until a warrant has been negotiated or an electronic funds transfer has been deposited in accordance with law.

(4) Retirement benefits not claimed within 5 years after the member's death are forfeited and revert to the retirement system trust fund.

(5) This section does not prevent the administration of an investment alternative within the defined contribution plan to the same extent that all other investment alternatives within the defined contribution plan are managed.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(6), (7); amd. Sec. 2, Ch. 4, Sp. L. June 1986; amd. Sec. 15, Ch. 265, L. 1993; Sec. 19-3-603, MCA 1991; redes. 19-2-505 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 5, Ch. 58, L. 1999; amd. Sec. 16, Ch. 471, L. 1999; amd. Sec. 11, Ch. 562, L. 1999; amd. Sec. 7, Ch. 99, L. 2001.

19-2-506. Payment of contributions by employers — accompanying reports — penalty. (1) The board shall prescribe by rule the procedure for payment of retirement contributions for the retirement systems administered by the board. Each employer shall pick up the employee contributions and remit the employer and employee contributions required by the member's retirement system. Payments must be considered delinquent until both the required contributions and the valid payroll report are received by the board.

(2) The board may collect payments delinquent under subsection (1) with an interest penalty at the rate of 9% a year or \$10 a day, whichever is greater. The board may, in its discretion, waive the penalty. The collection may be made by either:

(a) an action in a court of competent jurisdiction against the employer; or

(b) deductions, at the request of the board, from any other money payable to the employer by any agency or fund of the state.

(3) The board shall prescribe by rule the procedure for submitting employer reports. The reports must include data about member and nonmember employees who work for the employer. The data required must include items such as compensation paid, hourly rates, changes in pay status, current home addresses, and any other data concerning employees that the board needs to administer the specific retirement system or plan. The board shall establish the method of reporting, the reporting period, and the frequency of reports to meet the demands of the relevant retirement system or plan. The board may establish by rule the penalty fees for noncompliance in reporting any of the required information and the procedure for collection of the fees.

(4) Each employer shall furnish additional information concerning members that the board may request in connection with claims by members for benefits or service under a retirement system.

(5) The board, from time to time, may send materials to an employer for redistribution to employees. To facilitate distribution, each employer shall provide the board with a point of contact responsible for distributing the materials.

History: En. 68-2505 by Sec. 53, Ch. 323, L. 1973; amd. Sec. 11, Ch. 99, L. 1977; R.C.M. 1947, 68-2505(1); amd. Sec. 1, Ch. 348, L. 1979; amd. Sec. 1, Ch. 138, L. 1991; amd. Sec. 16, Ch. 265, L. 1993; Sec. 19-3-802, MCA 1991; redes. 19-2-506 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 12, Ch. 562, L. 1999; amd. Sec. 8, Ch. 99, L. 2001; amd. Sec. 5, Ch. 429, L. 2003.

19-2-507. Transfer between funds. Any pension trust fund out of which payments are made under the provisions of this title may be reimbursed to the extent of the payments by transfer of a sufficient sum for the reimbursement from another pension trust fund or funds under the control of the board.

History: En. 68-2506 by Sec. 54, Ch. 323, L. 1973; amd. Sec. 12, Ch. 99, L. 1977; R.C.M. 1947, 68-2506; amd. Sec. 3, Ch. 496, L. 1981; amd. Sec. 17, Ch. 265, L. 1993; Sec. 19-3-605, MCA 1991; redes. 19-2-507 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 13, Ch. 562, L. 1999.

19-2-508 through 19-2-510 reserved.

19-2-511. Limitation of liability. (1) The board shall exercise its fiduciary authority in the same manner that would be used by a prudent person acting in the same capacity who is familiar with the circumstances and in an enterprise of a similar character with similar aims.

(2) Plan fiduciaries are not liable for any loss to a participant's or beneficiary's account under a defined contribution plan or an optional retirement program established pursuant to 19-21-101 that results from the participant's or beneficiary's exercise of control.

(3) Plan fiduciaries are not responsible for the acts or omissions of any employer or reporting agency or of any vendor providing services to the defined contribution plan or optional retirement program. Nothing in this subsection limits the liability of any vendor for services required by contract.

(4) Plan fiduciaries are not liable for their reliance on the express provisions of the defined contribution plan or optional retirement program.

(5) Plan fiduciaries are not liable for investment losses incurred in the defined contribution plan or optional retirement program as a result of incorrect reporting by an employer or other reporting agency.

History: En. Sec. 3, Ch. 490, L. 2001; amd. Sec. 1, Ch. 38, L. 2003.

Part 6

Termination of Membership and Refunds

19-2-601. Termination of membership. If a member's accumulated contributions under a retirement system are refunded, the person ceases to be a member of that system, all the person's service is canceled, and the person relinquishes claim to any benefits payable to members of the retirement system.

History: En. 68-1603 by Sec. 7, Ch. 323, L. 1973; R.C.M. 1947, 68-1603; amd. Sec. 18, Ch. 265, L. 1993; Sec. 19-3-406, MCA 1991; redes. 19-2-601 by Sec. 238, Ch. 265, L. 1993.

19-2-602. Refund of member's contributions on termination of service. (1) Except as provided in this section, any member who has terminated service, other than by death or retirement, must be paid the member's accumulated contributions upon the filing of a written

application by the member and board approval. Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions.

(2) A nonvested member who has terminated service with accumulated contributions of less than \$200 must be paid the accumulated contributions in a lump sum as soon as administratively feasible without a written application being filed by the member.

(3) A nonvested member who has terminated service with accumulated contributions of \$200 to \$1,000 must be paid the accumulated contributions in a lump sum as soon as administratively feasible, unless a written application is filed pursuant to subsection (4).

(4) Upon the filing of a written application by an alternate payee eligible to receive a single distribution of \$200 or more under 19-2-907 or 19-2-909 or by a member who is terminating service and is eligible to receive a refund of \$200 or more of accumulated contributions, the board shall make a direct rollover distribution as allowed under Internal Revenue Code section 401(a)(31). The direct rollover distribution must be paid directly to an eligible retirement plan allowed under applicable federal law or to a Roth IRA, provided for under 26 U.S.C. 408A. The applicant is responsible for designating an eligible retirement plan on forms provided by the board. The portion of the account not eligible for direct rollover distribution must be paid directly to the recipient.

History: En. 68-1905 by Sec. 26, Ch. 323, L. 1973; amd. Sec. 6, Ch. 128, L. 1975; R.C.M. 1947, 68-1905; amd. Sec. 1, Ch. 107, L. 1979; amd. Sec. 4, Ch. 496, L. 1981; amd. Sec. 19, Ch. 265, L. 1993; Sec. 19-3-703, MCA 1991; redes. 19-2-602 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 6, Ch. 58, L. 1999; amd. Secs. 14, 99(2), Ch. 562, L. 1999; amd. Sec. 9, Ch. 99, L. 2001; amd. Sec. 3, Ch. 329, L. 2005; amd. Sec. 1, Ch. 128, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 128 in (3) near middle decreased amount from \$5,000 to \$1,000; and in (4) at end of second sentence inserted "or to a Roth IRA, provided for under 26 U.S.C. 408A". Amendment effective October 1, 2007.

19-2-603. Reinstatement after withdrawal of contributions. (1) Except as otherwise provided in chapter 3, part 21, of this title and this section, a person who again becomes a member of a defined benefit plan subsequent to the refund of the person's accumulated contributions after a termination of previous membership is considered a new member without previous membership service or service credit. The person may reinstate that membership service or service credit by redepositing the sum of the accumulated contributions that were refunded to the person at the last termination of the person's membership plus the interest that would have been credited to the person's accumulated contributions had the refund not taken place. If the person makes this redeposit, the membership service and service credit previously canceled must be reinstated.

(2) Regardless of whether this redeposit is made, the documents held by the retirement system as executed by the member prior to termination of membership must be held by the system for the same purposes as prior to termination, and beneficiaries nominated in the documents continue unchanged until changed as provided in 19-2-801.

History: En. 68-1906 by Sec. 27, Ch. 323, L. 1973; amd. Sec. 7, Ch. 128, L. 1975; R.C.M. 1947, 68-1906; amd. Sec. 20, Ch. 265, L. 1993; Sec. 19-3-704, MCA 1991; redes. 19-2-603 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 17, Ch. 471, L. 1999; amd. Sec. 6, Ch. 429, L. 2003.

Part 7

Service Credit and Additional Contributions

19-2-701. Service credit. (1) Service credit for all covered employment with each employer will be credited to a retirement system on a cumulative basis for all purposes, including but not limited to calculation of benefits and application of any maximum hour restrictions, limitations, or requirements. A member may not be credited with more than full-time service credit as a result of this cumulation of service credit. Subject to the provisions of chapters 3, 5 through 9, and 13, a member must receive 1 month of service credit for each full month of service under rules adopted by the board.

(2) Service credits must be used in calculating a retirement or survivorship benefit.

(3) A retired member is not eligible to earn service credit.

History: En. Sec. 21, Ch. 265, L. 1993; amd. Sec. 6, Ch. 370, L. 1997; amd. Sec. 15, Ch. 562, L. 1999.

19-2-702. Membership service. A member who is not retired must receive membership service for all periods of service, regardless of hours worked or compensation received during that service. The membership service must be used to determine:

- (1) whether a member is vested;
- (2) when the member is eligible for service retirement, early retirement, or disability retirement; or
- (3) the eligibility of beneficiaries for survivorship benefits.

History: En. Sec. 22, Ch. 265, L. 1993; amd. Sec. 7, Ch. 370, L. 1997; amd. Sec. 7, Ch. 429, L. 2003.

19-2-703. No duplication of benefits for same service. (1) A member may not receive service credit or membership service in more than one retirement system, plan, or program under Title 19 for the same service.

(2) A member may not receive service credit or membership service in more than one retirement system, plan, or program in Title 19 for the same period of military service.

History: En. 68-2501 by Sec. 49, Ch. 323, L. 1973; amd. Sec. 16, Ch. 332, L. 1977; R.C.M. 1947, 68-2501(2); amd. Sec. 23, Ch. 265, L. 1993; Sec. 19-3-508, MCA 1991; redes. 19-2-703 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 16, Ch. 562, L. 1999; amd. Sec. 10, Ch. 99, L. 2001; amd. Sec. 4, Ch. 329, L. 2005.

19-2-704. Purchasing service credits allowed — payroll deduction. (1) Subject to the rules promulgated by the board, an eligible member may elect to make additional contributions to purchase service credits as provided by the statutes governing the retirement system.

(2) Subject to any statutory provision establishing stricter limitations, only active or vested inactive members are eligible to purchase or transfer service credit, membership service, or contributions.

(3) A member who wishes to redeposit amounts withdrawn under 19-2-602 or who is eligible to purchase service credit as provided by the statutes governing the retirement system to which the member belongs may elect to make a lump-sum payment, installment payments, or a combination of a lump-sum payment and installment payments.

(4) Installment payments must be paid directly to the board, unless the member elects to make payments by irrevocable payroll deduction. The minimum installment period for payments made directly to the board is 3 months, and the maximum installment period is 5 years.

(5) To elect installment payments by irrevocable payroll deduction, the member shall file with the board and the member's employer an irrevocable, written application and authorization for payroll deductions. The application and authorization:

- (a) must be signed by the member and the member's employer;
- (b) must specify the dollar amount of each deduction and the number of deductions to be made, subject to any maximum amounts or duration established by state or federal law;
- (c) must provide that the deductions are to be made over a period of time of no less than 3 months and no more than 5 years in duration;
- (d) may not give the member the option of receiving the deduction amounts directly instead of having them paid by the employer to the board; and
- (e) must specify that the additional contributions being picked up, although designated as employee contributions, are being paid by the employer directly to the board in lieu of contributions paid directly by the employee.

(6) If the board notifies the employer that a proper written application and authorization has been filed with the board, the employer shall initiate the payroll deduction as follows:

(a) An employer shall pick up the member's elective additional contributions made pursuant to a payroll deduction authorization. The contributions picked up by the employer must be paid from the same source as is used to pay compensation to the member and must be included as part of the member's earned compensation before the deduction is made.

(b) Employee contributions, even though designated as employee contributions for state law purposes, are paid by the member's employer in lieu of contributions paid directly by the member to the board.

(c) The member may not choose to receive the contributed amounts directly instead of having them paid by the employer to the board.

(d) The effective date of the employer pickup and payment pursuant to this section is the date on which the employee's additional contribution is first deducted from the employee's compensation. However, the effective date may not be prior to the date that the member properly completes the written application and authorization for payroll deductions and files it with the board. The pickup may not apply to any additional contributions made before the effective date or to any contributions related to compensation earned for services rendered before the effective date.

(e) Installment payments initiated by contract prior to July 1, 1999, may be paid by payroll deduction only if the member files a written application and authorization for payroll deductions pursuant to this section. If the member does not file a written application and authorization for payroll deductions pursuant to this section, the installment contract payments agreed to by the member must be paid by the member directly to the board.

(f) A member may file more than one irrevocable payroll deduction agreement and authorization as long as a subsequent deduction authorization does not amend a previous irrevocable authorization. A member may not prepay an amount under an irrevocable payroll deduction, except when a member with an existing contract to purchase service credit elects to transfer to the defined contribution retirement plan pursuant to 19-3-2111(7) or to the optional retirement program pursuant to 19-3-2112(2)(j).

(7) If a member terminates employment or dies before completing all payments required by a payroll deduction authorization filed pursuant to this section, the deduction authorization expires and the board shall prorate the service credit based on the amount paid unless further payment is made as provided in this subsection. In the case of a termination from employment, the member may make a lump-sum payment for up to the balance of the service credit remaining to be purchased, subject to the limitations of section 415 of the Internal Revenue Code. In the case of death of the member, the payment may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code.

History: En. 68-1903 by Sec. 24, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1903; amd. Sec. 24, Ch. 265, L. 1993; Sec. 19-3-702, MCA 1991; redes. 19-2-704 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 8, Ch. 412, L. 1995; amd. Sec. 8, Ch. 370, L. 1997; amd. Sec. 7, Ch. 58, L. 1999; amd. Sec. 11, Ch. 99, L. 2001; amd. Sec. 8, Ch. 429, L. 2003; amd. Sec. 5, Ch. 329, L. 2005.

19-2-705. Repealed. Sec. 44, Ch. 58, L. 1999.

History: En. 68-1605 by Sec. 9, Ch. 323, L. 1973; amd. Sec. 3, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1605; amd. Sec. 25, Ch. 265, L. 1993; Sec. 19-3-502, MCA 1991; redes. 19-2-705 by Sec. 238, Ch. 265, L. 1993.

19-2-706. Additional service credit for active member involuntarily terminated from employment. (1) The provisions of subsection (3) apply to an employee of the state or university system if:

(a) the employee is an active member of the public employees', game wardens' and peace officers', sheriffs', firefighters' unified, or highway patrol officers' retirement system;

(b) the employee has involuntarily terminated from employment because of elimination of the employee's position as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature or, in the case of a member who is a legislator, the legislator is terminated from office in either one of the houses of the legislature because of term limits;

(c) the employee is eligible for service retirement or early retirement under the applicable provisions of the retirement system to which the member belongs; and

(d) the employee waives the rights and benefits for which the employee would otherwise be eligible under the State Employee Protection Act.

(2) The cost of each year of service credit purchased under this section is the total actuarial cost of purchasing the service credit based on the most recent actuarial valuation of the retirement system.

(3) The employer of an eligible member under subsection (1) shall pay a portion of the total cost of purchasing up to 3 years of additional service credit that the member was qualified to purchase under 19-3-513, 19-6-804, 19-7-804, 19-8-904, or 19-13-405. The employer-paid portion must be calculated using the formula $A \times B \times C$ when:

(a) A is equal to a maximum of 3 additional years of service credit that the member is eligible to purchase;

(b) B is equal to the sum of the employer and employee contribution rates in the member's retirement system; and

(c) C is equal to the member's gross compensation paid during the immediate preceding 12 months of membership service. The employer may not be charged more than the total actuarial cost of the service credit purchased.

(4) The member shall pay the difference, if any, between the full actuarial cost of the service credit to be purchased and the contribution required from the employer under subsection (3). The member may elect to purchase less than the full amount of service for which the member is eligible under this section, but the election may not reduce the amount of the employer's contribution as calculated under subsection (3).

(5) The board may allow an employer to pay the contributions required under subsection (3) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403.

(6) (a) A member who has received additional service credit under this section and who returns to employment for the same jurisdiction for 960 or more hours in a calendar year in any retirement system forfeits the additional service credit. The employer's contribution to purchase that member's additional service credit, minus any retirement benefits already paid, must be credited to the employer.

(b) As used in subsection (6)(a), the term "same jurisdiction" means all agencies of the state, including the university system.

History: En. Sec. 5, Ch. 524, L. 1995; amd. Sec. 12, Ch. 223, L. 1997; amd. Sec. 3, Ch. 361, L. 1997; amd. Sec. 8, Ch. 58, L. 1999; amd. Sec. 1, Ch. 118, L. 1999; amd. Sec. 72, Ch. 471, L. 1999; amd. Sec. 1, Ch. 66, L. 2001; amd. Sec. 9, Ch. 429, L. 2003; amd. Sec. 6, Ch. 329, L. 2005.

19-2-707. Qualified military service. Notwithstanding any other provision of state law governing a retirement system, contributions, benefits, and service credit for qualified military service are governed by section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act of 1994. Contributions, benefits, and service credit for state active duty are governed by the Montana Military Service Employment Rights Act provided in Title 10, chapter 1, part 10.

History: En. Sec. 9, Ch. 58, L. 1999; amd. Sec. 24, Ch. 381, L. 2005.

19-2-708. Rollover of contributions. (1) A member who elects to and is eligible to purchase service credit from another retirement system or plan into a retirement system provided for in 19-2-302 may, prior to retirement, file a written application with the board to roll over, in accordance with the requirements of this part, to the retirement system to which the member belongs all or a portion of the member's account with the other eligible retirement system or plan. The total amount of the rollover to the retirement system may not exceed the amount of service credit that the member is allowed to purchase as a member of that system. The rollover must be completed prior to the member's retirement.

(2) The board shall accept a direct rollover of eligible distributions from another eligible retirement plan as provided in subsection (1) only to the extent permitted by section 401(a)(31) of the Internal Revenue Code.

History: En. Sec. 10, Ch. 58, L. 1999; amd. Sec. 12, Ch. 99, L. 2001; amd. Sec. 10, Ch. 429, L. 2003.

19-2-709. Transfer of service and contributions from other Montana public employee retirement systems. (1) A member eligible to transfer service credit, pursuant to 19-2-715 and 19-3-511, into the system to which the member belongs shall complete the transfer prior to the member's retirement.

(2) The accumulated contributions to be transferred by the member may include both taxed contributions and tax-deferred contributions and interest. However, if less than all of the member's accumulated contributions on deposit in a pension trust fund are being transferred, the transfer of taxed and tax-deferred amounts must be made on a proportionate basis, with the remainder refunded to the member. The transferring agency shall at the time of the transfer identify the taxed and tax-deferred amounts being transferred to the board.

History: En. Sec. 11, Ch. 58, L. 1999; amd. Sec. 11, Ch. 429, L. 2003.

19-2-710. Nonapplication of part to defined contribution plan. Except as otherwise provided in chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

History: En. Sec. 40, Ch. 471, L. 1999.

19-2-711 through 19-2-714 reserved.

19-2-715. Purchase of Montana public service. (1) (a) A member may, at any time before retirement, file a written application with the board to purchase as service credit in the member's retirement system all or any portion of the member's previous service credit in the public employees', judges', highway patrol officers', sheriffs', game wardens' and peace officers', firefighters' unified, or municipal police officers' retirement system if the member has:

- (i) received or is eligible to receive a refund of accumulated contributions; or
- (ii) become a member of one of the other retirement systems covered under chapter 3, 5, 6, 7, 8, 9, or 13 of this title.

(b) To purchase this service credit, the member shall pay the actuarial cost of the service credit in the member's current retirement system, based on the system's most recent actuarial valuation and the annual compensation of the member, minus the employer contribution provided in subsection (1)(c).

(c) Upon receiving the member's payment under subsection (1)(b), the board shall transfer from the member's former retirement system to the member's current retirement system an amount equal to the employer contributions made on compensation during the member's former service, but no more than an amount equal to the normal cost contribution rate minus the employee contribution rate in the member's current retirement system according to the system's most recent actuarial valuation.

(2) (a) An active member may, at any time before retirement, file a written application with the board to purchase all or a portion of service credit for full-time service performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's former public employer. To purchase service credit under this section, the member shall pay the actuarial cost of the service credit in the member's current retirement system, as determined by the board, based on the system's most recent actuarial valuation.

(b) The board is the sole authority under subsection (2)(a) in determining what constitutes full-time public service, subject to 19-2-403.

History: En. Sec. 1, Ch. 429, L. 2003; amd. Sec. 2, Ch. 128, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 128 inserted (1)(a)(ii) concerning membership in another retirement system; and made minor changes in style. Amendment effective October 1, 2007.

Part 8

Beneficiaries

19-2-801. Designation of beneficiary. (1) In the absence of any statutory beneficiaries, designated beneficiaries are the natural persons, charitable organizations, estate of the payment recipient, or trusts for the benefit of natural living persons that the member or payment recipient designates on the membership card or other form provided by the board. Unless otherwise provided by statute, a member or payment recipient may revoke the designation and name different designated beneficiaries by filing with the board a new membership card or other form provided by the board. The most recent beneficiary designation filed with the board is effective for all purposes.

(2) If a statutory or designated beneficiary predeceases the member or payment recipient, the predeceased beneficiary's share must be paid to the remaining statutory or designated beneficiaries in amounts proportional to each remaining statutory or designated beneficiary's original share.

(3) A statutory or designated beneficiary who renounces an interest in the payment rights of a member or payment recipient will be considered, with respect to that interest, as having predeceased the member or payment recipient.

History: En. 68-2401 by Sec. 47, Ch. 323, L. 1973; R.C.M. 1947, 68-2401(part); amd. Sec. 10, Ch. 496, L. 1981; amd. Sec. 1, Ch. 154, L. 1985; amd. Sec. 26, Ch. 265, L. 1993; Sec. 19-3-1301, MCA 1991; redes. 19-2-801 by

Sec. 238, Ch. 265, L. 1993; amd. Sec. 9, Ch. 370, L. 1997; amd. Sec. 17, Ch. 562, L. 1999; amd. Sec. 13, Ch. 99, L. 2001; amd. Sec. 12, Ch. 429, L. 2003.

19-2-802. Effect of no designation or no surviving designated beneficiary. (1) If a statutory or designated beneficiary does not survive the member or payment recipient, the estate of the member or payment recipient is entitled to any accrued lump-sum payment or accrued retirement benefit not received prior to the member's or payment recipient's death. If the estate, as either a designated beneficiary or as a beneficiary by default as provided in this subsection, would not be probated but for the amount due to the estate from the retirement system, all of the amount due to the estate must be paid directly, without probate, to the surviving next of kin of the deceased or the guardians of the survivor's estate, share and share alike.

(2) Payment must be made in the same order in which the following groups are listed:

- (a) husband or wife;
- (b) children;
- (c) father and mother;
- (d) grandchildren;
- (e) brothers and sisters; or
- (f) nieces and nephews.

(3) A payment may not be made to a person included in any of the groups listed in subsection (2) if at the date of payment there is a living person in any of the groups preceding the group of which the person is a member, as listed. Payment must be made upon receipt from the person of an affidavit, upon a form supplied by the board, that there are no living individuals in the groups preceding the group of which the person is a member and that the estate of the deceased will not be probated.

(4) The payment must be in full and complete discharge and acquittance of the board and system on account of the member's or payment recipient's death.

History: En. 68-2401 by Sec. 47, Ch. 323, L. 1973; R.C.M. 1947, 68-2401(part); amd. Sec. 2, Ch. 154, L. 1985; amd. Sec. 27, Ch. 265, L. 1993; Sec. 19-3-1302, MCA 1991; redes. 19-2-802 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 10, Ch. 370, L. 1997; amd. Sec. 18, Ch. 562, L. 1999; amd. Sec. 13, Ch. 429, L. 2003.

19-2-803. Payment to custodian of minor beneficiary. (1) Except as provided in subsection (2), if any benefit from a system is payable to a minor, the benefit must be paid to one of the following:

- (a) a surviving parent, if any;
- (b) a parent awarded custody of the minor in a divorce proceeding;
- (c) a custodian designated under Title 72, chapter 26;
- (d) a guardian appointed pursuant to Title 72, chapter 5, part 2; or
- (e) a conservator appointed pursuant to Title 72, chapter 5, part 4.

(2) If any benefit payable from the highway patrol officers' retirement system under chapter 6 of this title, the municipal police officers' retirement system under chapter 9 of this title, or the firefighters' unified retirement system under chapter 13 of this title is payable to a statutory beneficiary who is a dependent child, as defined under the provisions of that system, of a system member and the system member has established a trust for the dependent child, then the benefit must be paid to the trustee of that trust.

(3) The payment must be in full and complete discharge and acquittance of the board and system on account of the benefit. The person receiving benefit payments pursuant to this section shall account to the minor for the money when the minor reaches the age of majority.

History: En. 68-2402 by Sec. 48, Ch. 323, L. 1973; R.C.M. 1947, 68-2402; amd. Sec. 11, Ch. 496, L. 1981; amd. Sec. 28, Ch. 265, L. 1993; Sec. 19-3-1304, MCA 1991; redes. 19-2-803 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 1, Ch. 369, L. 2005.

19-2-804. Limitations on payment of benefits to person causing member's death or disability. If a person is convicted of knowingly, purposely, or intentionally causing a member's death or disability, that person may not receive benefits or payments from a retirement system and the benefits must be payable as otherwise provided in statute.

History: En. Sec. 1, Ch. 153, L. 1985; amd. Sec. 29, Ch. 265, L. 1993; Sec. 19-3-1305, MCA 1991; redes. 19-2-804 by Sec. 238, Ch. 265, L. 1993.

Part 9 Management of Benefit Payments

19-2-901. Estimate of benefit when information incomplete. If it is impracticable for the board to determine from the records the length of service, the compensation, or the age of a member or if a member refuses or fails to give the board a statement of the member's state service, compensation, or age, the board may estimate, for the purposes of this title, the length of service, compensation, or age.

History: En. 68-2503 by Sec. 51, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2503; amd. Sec. 30, Ch. 265, L. 1993; Sec. 19-3-1401, MCA 1991; redes. 19-2-901 by Sec. 238, Ch. 265, L. 1993.

19-2-902. Payment of benefits. (1) A retirement benefit or survivorship benefit granted under a retirement system subject to this chapter, other than a benefit under the defined contribution plan, must be payable in monthly installments, except as provided in this part.

(2) If the total actuarial present value of a benefit payable to a member or beneficiary is equal to or less than \$5,000, the board shall pay the present value of the benefit to the member or beneficiary in a single lump sum unless the member or beneficiary chooses to receive a monthly benefit. The lump sum must be paid at the time the initial monthly benefit would otherwise be payable. An election to receive a monthly benefit must be made at least 30 days prior to the first payment date.

(3) If a benefit recipient dies before the last day of the month, a smaller pro rata amount otherwise payable to the payment recipient must be paid to the designated beneficiary, statutory beneficiary, or contingent annuitant or to the benefit recipient's estate, as appropriate.

History: En. 68-2501 by Sec. 49, Ch. 323, L. 1973; amd. Sec. 16, Ch. 332, L. 1977; R.C.M. 1947, 68-2501(1); amd. Sec. 31, Ch. 265, L. 1993; Sec. 19-3-1402, MCA 1991; redes. 19-2-902 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 12, Ch. 58, L. 1999; amd. Sec. 18, Ch. 471, L. 1999.

19-2-903. Adjustment of errors in payments. (1) If the amount of a contribution payment is incorrect, the board may reject the payment or accept the payment and approve any of the following methods to collect the correct amount:

- (a) adjustment of subsequent payments from a member or an employer;
- (b) installment payments or a lump-sum payment from an employer; or
- (c) a lump-sum payment or a rollover from a member.

(2) If a purchase of service credit made pursuant to 19-2-704 is determined to be incorrect, the board may approve correcting the error by any of the following methods:

- (a) adjusting the subsequent lump-sum or installment payments from the member or the member's employer;
 - (b) accepting a lump-sum payment or rollover from the member for the amount underpaid;
- or

- (c) granting the member service credit proportional to the amount actually paid.

(3) If fraud or error results in a member, survivor, or beneficiary receiving more or less than entitled to, then on the discovery of the error, the board shall correct the error and, if necessary, equitably adjust the payments.

History: En. 68-2509 by Sec. 57, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2509; amd. Sec. 32, Ch. 265, L. 1993; Sec. 19-3-1403, MCA 1991; redes. 19-2-903 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 14, Ch. 99, L. 2001; amd. Sec. 7, Ch. 329, L. 2005.

19-2-904. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the retirement system and paid directly by the system to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

History: En. 68-2502.1 by Sec. 7, Ch. 214, L. 1977; R.C.M. 1947, 68-2502.1; Sec. 19-3-1404, MCA 1991; redes. 19-2-904 by Sec. 238, Ch. 265, L. 1993.

19-2-905. Payments under workers' compensation. All payments provided for in this chapter, except as otherwise provided, are in addition to any other benefits provided for under the Workers' Compensation Act of the state of Montana.

History: En. 68-2625 by Sec. 25, Ch. 178, L. 1974; R.C.M. 1947, 68-2625; amd. Sec. 33, Ch. 265, L. 1993; Sec. 19-7-103, MCA 1991; redes. 19-2-905 by Sec. 238, Ch. 265, L. 1993.

19-2-906. Limitations on disability or survivorship benefits. If the board determines that the disability or death of a member of a defined benefit plan is proximately caused by the gross negligence, willful misconduct, or violation of the law by the member, the board may revoke, suspend, or refuse to grant benefits except an annuity that is the actuarial equivalent of the member's accumulated contributions with regular interest to the day the benefit commences.

History: En. 11-1887 by Sec. 28, Ch. 456, L. 1977; R.C.M. 1947, 11-1887; amd. Sec. 34, Ch. 265, L. 1993; Sec. 19-9-1004, MCA 1991; redes. 19-2-906 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 19, Ch. 471, L. 1999.

19-2-907. Alternate payees — family law orders — rulemaking. (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "family law order" means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section; and

(b) "participant" means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(3) A family law order must identify a participant and an alternate payee by full name, current address, date of birth, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(5) With respect to a defined benefit plan, a family law order may provide for payment to an alternate payee only as follows:

(a) Retirement benefit payments or refunds may be apportioned by directing payment of either a percentage of the amount payable or a fixed amount of no more than the amount payable to the participant. Payments to an alternate payee may be limited to a specific amount each month if the number of payments is specified.

(b) The maximum amount of disability or survivorship benefits that may be paid to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. The maximum amount paid may be zero, depending on the member's age and service credit at the time of disability or death. Conversion of a disability retirement to a service retirement pursuant to 19-2-406(4), 19-3-1015(2), 19-6-612(2), or 19-8-712(2) does not increase the maximum monthly amount that may be paid to an alternate payee.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be paid as a percentage only if existing benefit payments are paid as a percentage. The adjustments must be paid as a percentage in the same ratio as existing benefit payments.

(d) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system or plan allows for that option.

(6) With respect to a defined contribution plan, a family law order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount paid may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct

payment, rollover, or transfer. A new account may be established for an alternate payee, but money in the account must be totally disbursed to the alternate payee as soon as feasible upon the participant's termination of service or death.

(b) If the participant is receiving periodic payments or an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(7) The duration of monthly payments paid from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(8) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

(9) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

(10) The board shall adopt rules to provide for the administration of family law orders.

History: En. Sec. 1, Ch. 259, L. 1993; amd. Sec. 1, Ch. 111, L. 1995; amd. Sec. 11, Ch. 370, L. 1997; amd. Sec. 20, Ch. 471, L. 1999; amd. Sec. 15, Ch. 99, L. 2001; amd. Sec. 4, Ch. 490, L. 2001; amd. Sec. 14, Ch. 429, L. 2003; amd. Sec. 8, Ch. 329, L. 2005; amd. Sec. 3, Ch. 128, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 128 throughout section substituted "paid" for "apportioned"; and in (5)(b) inserted second sentence concerning maximum amount of zero. Amendment effective October 1, 2007.

19-2-908. Time of commencement of benefit — rulemaking. (1) (a) The board shall grant a benefit to any active or inactive member who is vested, or the member's statutory or designated beneficiary, who has fulfilled all eligibility requirements, terminated service, and filed the appropriate written application with the board. However, the board may, on its own accord and without a written application, begin benefit payments to a member or beneficiary in order to comply with section 401(a)(9) of the Internal Revenue Code.

(b) A member may apply for retirement benefits before termination from employment, but commencement of the benefits must be as provided in this section.

(2) (a) Except as provided in subsection (2)(b), the service retirement benefit may commence on the first day of the month following the eligible member's last day of membership service or, if requested by the inactive member in writing, on the first day of a later month following filing of the written application.

(b) If an elected official's term of office expires before the 15th day of the month, the official may elect that service retirement benefits from a defined benefit plan commence on the first day of the month following the official's last full month in office. An official electing this option shall file a written application with the board. An official electing this option may not earn membership service, service credit, or compensation for purposes of calculating highest average compensation or final average compensation, as defined under the provisions of the appropriate retirement system, in the partial month ending the official's term, and compensation earned in that partial month is not subject to employer or employee contributions.

(3) (a) Subject to the provisions of subsection (3)(b), the disability retirement benefit payable to a member must commence on the day following the member's termination from employment.

(b) The guaranteed annual benefit adjustment payable pursuant to 19-3-1605, 19-5-901, 19-6-710, 19-6-711, 19-7-711, 19-8-1105, 19-9-1009, 19-9-1010, 19-9-1013, 19-13-1010, and 19-13-1011 may not be paid retroactively. The guaranteed annual benefit adjustment begins on January 1 of the year after the member has received an amount equal to or greater than 12 months of disability benefit payments.

(4) Monthly survivorship benefits from a defined benefit plan must commence on the day following the death of the member.

(5) Estimated and finalized benefit payments must be issued as provided in rules adopted by the board.

(6) With respect to the defined contribution plan, the board shall adopt rules regarding the commencement of benefits that are consistent with applicable provisions of the Internal Revenue Code and its implementing regulations.

History: En. Sec. 3, Ch. 370, L. 1997; amd. Sec. 13, Ch. 58, L. 1999; amd. Sec. 21, Ch. 471, L. 1999; amd. Sec. 16, Ch. 99, L. 2001; amd. Sec. 15, Ch. 429, L. 2003; amd. Sec. 9, Ch. 329, L. 2005; amd. Sec. 4, Ch. 128, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 128 in (3)(a) at beginning inserted "Subject to the provisions of subsection (3)(b)"; inserted (3)(b) concerning timing of guaranteed annual benefit adjustments; and made minor changes in style. Amendment effective October 1, 2007.

19-2-909. Execution or withholding for support obligation — rulemaking. (1) Benefits in the retirement systems or plans provided for in chapters 3, 5 through 9, 13, and 17 are subject to execution and income withholding for the payment of a participant's support obligation.

(2) For purposes of this section, the following definitions apply:

(a) "Execution" means a warrant for distraint issued or a writ of execution obtained by the department of public health and human services when providing support enforcement services under Title IV-D of the Social Security Act.

(b) "Income withholding" means an income-withholding order issued under the provisions of Title 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in 40-5-157.

(c) "Participant" means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(d) "Support obligation" has the meaning provided in 40-5-403 for a support order.

(3) The execution or income-withholding order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(4) An execution or income-withholding order applied to a defined benefit retirement plan may provide for payment only as follows:

(a) Retirement benefit payments or refunds may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be paid under this section is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. The maximum amount paid may be zero, depending on the member's age and service credit at the time of disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(5) With respect to a defined contribution plan, an execution or income-withholding order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount paid may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. A new account may be established for an alternate payee, but money in the account must be totally disbursed to the alternate payee as soon as feasible upon the participant's termination of service or death.

(b) If the participant is receiving periodic payments or an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(6) The duration of monthly or other periodic payments paid from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(7) The board shall adopt rules to provide for the administration of execution or income-withholding orders.

History: En. Sec. 14, Ch. 552, L. 1997; amd. Sec. 22, Ch. 471, L. 1999; amd. Sec. 17, Ch. 99, L. 2001; amd. Sec. 5, Ch. 490, L. 2001; amd. Sec. 16, Ch. 429, L. 2003; amd. Sec. 10, Ch. 329, L. 2005; amd. Sec. 5, Ch. 128, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 128 in (4)(b) in first sentence near beginning after "may be" deleted "apportioned and" and inserted second sentence concerning maximum amount of zero; and in (5)(a) near beginning of second sentence and in (6) near middle of first sentence substituted "paid" for "apportioned". Amendment effective October 1, 2007.

Part 10 Special Provisions

19-2-1001. Maximum contribution and benefit limitations. (1) Employee contributions paid to and retirement benefits paid from a retirement system or plan may not exceed the annual limits on contributions and benefits, respectively, allowed by section 415 of the Internal Revenue Code.

(2) A member may not receive an annual benefit that exceeds the dollar amount specified in section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in section 415(b) of the Internal Revenue Code.

(3) Notwithstanding any other provision of law to the contrary, the board may modify a request by a member to make a contribution to a retirement system or plan if the amount of the contribution would exceed the limits provided in section 415 of the Internal Revenue Code, by using the following methods:

(a) If the law requires a lump-sum payment for the purchase of service credit, the board may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under section 415(c) or 415(n) of the Internal Revenue Code.

(b) If payment pursuant to subsection (3)(a) will not avoid a contribution in excess of the limits imposed by section 415(c) of the Internal Revenue Code, the board shall either reduce the member's contribution to an amount within the limits of that section or refuse the member's contribution.

(4) The limitation year for purposes of section 415 of the Internal Revenue Code is the calendar year beginning each January 1 and ending December 31.

(5) "Salary" or any other similar term used for the purposes of determining compliance with section 415 of the Internal Revenue Code includes the amount of an elective deferral, as defined in section 402(g) of the Internal Revenue Code, or any other contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member because of sections 125, 403(b), or 457 of the Internal Revenue Code.

History: En. Sec. 1, Ch. 14, L. 1987; amd. Sec. 35, Ch. 265, L. 1993; Sec. 19-3-107, MCA 1991; redes. 19-2-1001 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 14, Ch. 58, L. 1999; amd. Sec. 31, Ch. 7, L. 2001; amd. Sec. 6, Ch. 490, L. 2001.

19-2-1002. Vesting of retirement benefits upon termination of plan. Upon termination of a retirement system or plan, termination of employment of a substantial number of members that would constitute a partial termination of the retirement system or plan, or complete discontinuance of contributions to that retirement system or plan, the retirement benefit accrued to each member directly affected by the occurrence becomes fully vested and nonforfeitable to the extent funded.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(8); amd. Sec. 36, Ch. 265, L. 1993; Sec. 19-3-606, MCA 1991; redes. 19-2-1002 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 24, Ch. 471, L. 1999; amd. Sec. 7, Ch. 490, L. 2001.

19-2-1003. Transfer of dormant, nonvested member-accumulated contributions. The board may, in its discretion, transfer the accumulated contributions of a nonvested member

of a defined benefit system or plan to the pension trust fund of the system or plan in which the member is participating if the member has not participated in the system or plan as an employee for a period of 10 years. Rights of the member may not be jeopardized by the transfer, and the accumulated contributions must be transferred to the member's name upon subsequent return to service or subsequent application for refund.

History: En. 68-1907 by Sec. 28, Ch. 323, L. 1973; R.C.M. 1947, 68-1907; amd. Sec. 37, Ch. 265, L. 1993; Sec. 19-3-604, MCA 1991; redes. 19-2-1003 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 25, Ch. 471, L. 1999; amd. Sec. 8, Ch. 490, L. 2001.

19-2-1004. Exemption from taxes and legal process. Except as provided in 19-2-907 and 19-2-909, the right of a person to any benefit or payment from a retirement system or plan and the money in the system or plan's pension trust fund is not:

- (1) subject to execution, garnishment, attachment, or any other process;
- (2) subject to state, county, or municipal taxes except for:
 - (a) a benefit or annuity received in excess of \$3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or
 - (b) a refund of a member's regular contributions picked up by an employer after June 30, 1985, as provided in 19-3-315, 19-5-402, 19-6-402, 19-7-403, 19-8-502, 19-9-710, or 19-13-601; or
 - (3) assignable except as specifically provided in this chapter.

History: En. 68-2502 by Sec. 50, Ch. 323, L. 1973; R.C.M. 1947, 68-2502; amd. Sec. 3, Ch. 464, L. 1985; amd. Sec. 6, Ch. 823, L. 1991; amd. Sec. 2, Ch. 259, L. 1993; amd. Sec. 38, Ch. 265, L. 1993; Sec. 19-3-105, MCA 1991; redes. 19-2-1004 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 16, Ch. 552, L. 1997; amd. Sec. 9, Ch. 490, L. 2001.

19-2-1005. Compensation limit. A retirement system or plan subject to this chapter may not take into account compensation of a member in excess of the amount permitted in Internal Revenue Code section 401(a)(17).

History: En. Sec. 39, Ch. 265, L. 1993; amd. Sec. 26, Ch. 471, L. 1999; amd. Sec. 10, Ch. 490, L. 2001.

19-2-1006. Use of forfeitures. A retirement system or plan subject to this chapter may not apply forfeitures of benefits resulting from the member's termination of employment, the death of the member, or any other reason to increase the benefits of any member in a manner not permitted in Internal Revenue Code section 401(a)(8). However, forfeitures may be used to reduce the cost of administering a retirement system or plan subject to this chapter.

History: En. Sec. 40, Ch. 265, L. 1993; amd. Secs. 15, 46(3), Ch. 58, L. 1999; amd. Sec. 27, Ch. 471, L. 1999; amd. Sec. 11, Ch. 490, L. 2001.

19-2-1007. Required distributions. The benefits payable by a retirement system or plan subject to this chapter are subject to the requirements of section 401(a)(9) of the Internal Revenue Code as follows:

(1) Benefits must begin by the later of April 1 of the calendar year following the calendar year in which the member reaches 70 $\frac{1}{2}$ years of age or April 1 of the calendar year following the calendar year in which the member terminates employment. If a member fails to apply for retirement benefits by April 1 of the year following the calendar year in which the member attains age 70 $\frac{1}{2}$ or April 1st of the year following the calendar year in which the member terminates employment, whichever is later, the board shall begin distribution of the benefit as required by the retirement system or plan to which the member belongs or, subject to subsection (2), as an option 4 benefit in chapters 3, 5, 7, and 8 of this title.

(2) The member's entire interest in a retirement system or plan must be distributed over the life of the member or the lives of the member and a designated beneficiary or over a period not extending beyond the life expectancy of the member or the life expectancy of the member and a designated beneficiary. Death benefits must be distributed in accordance with section 401(a)(9) of the Internal Revenue Code and the regulations implementing that section.

(3) The life expectancy of a member or the member's beneficiary may not be recalculated after payment of the benefits has begun.

(4) When a member dies after distribution of benefits has begun, the remaining portion of the member's interest must be distributed beginning within 3 months of notification to the board of the death of the member and, if necessary, the identification of the beneficiary pursuant to 19-2-802 and must be distributed at least as rapidly as under the method of distribution prior to the member's death.

(5) When a member dies before distribution of benefits has begun, the entire interest of the member must be distributed within 5 years of the member's death. The 5-year payment rule does not apply to any portion of the member's interest that is payable to a designated beneficiary over the life or life expectancy of the beneficiary and that begins within 1 year after the date of the member's death. The 5-year payment rule does not apply to any portion of the member's interest that is payable to a surviving spouse, that is payable over the life or life expectancy of the spouse, and that begins no later than the date the member would have reached 70 ½ years of age. Distributions to a member's beneficiary must begin as soon as administratively feasible, but must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died. If the beneficiary has not elected the form of payment by that date, payment to the beneficiary must be made in the form of a lifetime monthly benefit payment if the beneficiary is eligible for a monthly benefit or in a lump sum if that is the only benefit payable to the beneficiary.

(6) The benefits payable must meet the minimum distribution incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code.

History: En. Sec. 41, Ch. 265, L. 1993; amd. Sec. 16, Ch. 58, L. 1999; amd. Sec. 28, Ch. 471, L. 1999; amd. Sec. 12, Ch. 490, L. 2001.

19-2-1008. Budget Act superseded. This chapter shall be valid and effective despite any provisions in the state Budget Act to the contrary.

History: En. 68-2508 by Sec. 56, Ch. 323, L. 1973; R.C.M. 1947, 68-2508; Sec. 19-3-106, MCA 1991; redes. 19-2-1008 by Sec. 238, Ch. 265, L. 1993.

19-2-1009. Penalty for fraud. A person who knowingly makes a false statement or who knowingly falsifies or permits to be falsified any record of a retirement system in an attempt to defraud the system is guilty of a misdemeanor punishable by a fine not exceeding \$1,000 or imprisonment not exceeding 1 year, or both.

History: En. Sec. 23, Ch. 289, L. 1967; R.C.M. 1947, 93-1129(part); amd. Sec. 42, Ch. 265, L. 1993; Sec. 19-5-104, MCA 1991; redes. 19-2-1009 by Sec. 238, Ch. 265, L. 1993.

19-2-1010. Retaining qualified plan status — content of plan document — board rulemaking authority. (1) The board shall administer the plan in the manner required to satisfy the applicable qualification requirements for a qualified governmental plan, as provided in the Internal Revenue Code. If a statutory provision affecting a retirement plan administered by the board conflicts with a qualification requirement in section 401 of the Internal Revenue Code or the retirement plan's status as a governmental plan under section 414(d) of the Internal Revenue Code and with consequent federal regulations, the provision is either ineffective or must be interpreted to conform with the federal qualification requirements and allow the plan to retain its qualified status.

(2) For the purposes of section 401(a) of the Internal Revenue Code, the plan document for each retirement system is composed of the applicable provisions of the Montana constitution, this chapter, the applicable chapter in Title 19 governing the system, and applicable rules, policies, and plan documents adopted by the board.

(3) The board may adopt rules to implement this section.

History: En. Sec. 1, Ch. 370, L. 1997; amd. Sec. 17, Ch. 58, L. 1999; amd. Sec. 17, Ch. 429, L. 2003.

19-2-1011 through 19-2-1014 reserved.

19-2-1015. Probate and nonprobate transfer statutes superseded. If a provision of this chapter conflicts with a provision of Title 72, chapter 2, part 8, the provision of this chapter supersedes the conflicting provision of Title 72, chapter 2, part 8.

History: En. Sec. 19, Ch. 562, L. 1999.

CHAPTER 3 PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Part 1 General Provisions

19-3-101. Short title. This chapter may be cited as "The Public Employees' Retirement System Act".

History: En. Sec. 1, Ch. 323, L. 1973; R.C.M. 1947, 68-1504.

19-3-103. Retirement system created — system to consist of two plans. (1) A defined benefit retirement plan is created and established to become effective July 1, 1945.

(2) A defined contribution plan is established as provided in part 21 of this chapter.

(3) The public employees' retirement system consists of the defined benefit plan and the defined contribution plan. Each plan within the system is governed by the applicable provisions of chapter 2 and this chapter.

History: En. 68-1502 by Sec. 3, Ch. 323, L. 1973; R.C.M. 1947, 68-1502; amd. Sec. 43, Ch. 265, L. 1993; amd. Sec. 29, Ch. 471, L. 1999.

19-3-108. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) (a) "Compensation" means remuneration paid out of funds controlled by an employer in payment for the member's services, or for time during which the member is excused from work because of a holiday or because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence, before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) the contributions made pursuant to 19-3-403(4)(a) for members of a bargaining unit;

(ii) in-kind goods provided by the employer, such as uniforms, housing, transportation, or meals;

(iii) in-kind services, such as the retraining allowance paid pursuant to 2-18-622, or employment-related services;

(iv) contributions to group insurance, such as that provided under 2-18-701 through 2-18-704; and

(v) lump-sum payments for compensatory leave, sick leave, or annual leave paid without termination of employment.

(2) "Contracting employer" means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

(3) "Defined benefit plan" means the plan within the public employees' retirement system established in 19-3-103 that is not the defined contribution plan.

(4) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer.

(5) "Employer contributions" means payments to a pension trust fund pursuant to 19-3-316 from appropriations of the state of Montana and from contracting employers.

(6) (a) "Highest average compensation" means a member's highest average monthly compensation during any 36 consecutive months of membership service, except as otherwise provided in subsection (6)(b) or (6)(c).

(b) For a member who has attained 65 years of age but has not served at least 36 months, highest average compensation means total compensation earned divided by the number of months the member has served.

(c) For a vested member who does not have 36 consecutive months of membership service, highest average compensation means the highest total compensation earned during any 36 consecutive calendar months divided by 36.

(d) Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a

month-for-month basis, the regular compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(7) "System" or "retirement system" means the public employees' retirement system established in 19-3-103.

History: En. Sec. 44, Ch. 265, L. 1993; amd. Sec. 12, Ch. 640, L. 1993; amd. Sec. 18, Ch. 58, L. 1999; amd. Sec. 30, Ch. 471, L. 1999; amd. Sec. 18, Ch. 99, L. 2001; amd. Sec. 2, Ch. 149, L. 2001; amd. Sec. 18, Ch. 429, L. 2003; amd. Sec. 10, Ch. 602, L. 2003; amd. Sec. 11, Ch. 329, L. 2005.

19-3-111. Exemption for certain university temporary employees — "temporary employee" defined. (1) This chapter does not apply to a temporary employee of the university system.

(2) As used in this section, "temporary employee" means an employee of the university system who is hired into a position that is not permanent and who has negotiated an alternative benefits package through a labor organization certified to represent employees of the university system pursuant to Title 39, chapter 31. The employer contribution to the alternative benefits package may not exceed the cost of the benefits that the employee would otherwise be entitled to through employment.

History: En. Sec. 2, Ch. 121, L. 1995.

19-3-112. Education fund established — allocation of employer contributions — educational program requirements. (1) (a) The board shall establish an education fund to be used to educate and inform system members in a manner consistent with the provisions of this section.

(b) For the ongoing educational services and communication services established pursuant to this section, from the employer contributions made pursuant to 19-3-316, 0.04% of the compensation paid to all of the employer's employees who are members of the system must be allocated to the education fund established in subsection (1)(a). The board shall from time to time review the sufficiency of this amount and recommend to the legislature the adjustments that it considers appropriate.

(2) (a) The educational services must provide system members with impartial and balanced information about plan choices, benefits, and features. The services must be provided in a variety of formats. Plan comparisons must, to the greatest extent possible, be based upon historical rates of return on investments or benefits available in each retirement plan.

(b) If educational services are conducted by a contractor, the board shall monitor the performance of the contract to ensure that the services are conducted in accordance with the contract, applicable law, and the rules of the board. A contractor hired to provide the educational program provided for in subsection (3) may not be the same entity contracted to provide other services for the defined contribution plan or the optional retirement program.

(3) The board shall offer an ongoing transfer educational program to provide new system members with information necessary to make informed plan choice decisions. The program must include but is not limited to information on:

- (a) determining the amount of money available to transfer to the defined contribution plan;
- (b) the features of and differences between the defined benefit plan and the defined contribution plan, both generally and specifically, as those differences may affect the member;
- (c) the expected benefit available if the member were to retire under each of the retirement plans, based on appropriate alternative sets of assumptions;
- (d) the rate of return from investments in the defined contribution plan that must be achieved to equal or exceed the expected monthly benefit payable to the member under the defined benefit plan, assuming the same time period in each plan;
- (e) the historical rates of return for the investment alternatives available in the defined contribution plan;
- (f) determining retirement income needs and comparing determined retirement income needs to each plan's possible or expected benefit;
- (g) use of supplemental retirement savings programs to enhance retirement income;
- (h) the plan choices available to employees of the university system pursuant to 19-3-2112 and the comparative benefits of each available plan; and

(i) payout options available in each of the retirement plans.

(4) Ongoing educational services and communication services must be provided after members have made their initial retirement plan choice. These services must continually provide members with information about their chosen plan, alternatives within their chosen plan, and decisions necessary for retirement preparation. The services must include but not be limited to information concerning:

(a) rights and conditions of membership;

(b) benefit features within the plan, options, and the effects of certain decisions;

(c) planning for retirement, including coordination of contributions and benefits with supplemental retirement savings programs;

(d) significant plan changes; and

(e) contribution rates and plan funding status.

(5) The board shall also establish a communication program to provide plan information to participating employers and the employer's personnel and payroll officers and to explain their respective responsibilities in conjunction with the retirement plans.

(6) This section does not prohibit a contracted plan vendor or vendors from providing system members with information and tools necessary to understand the available investment alternatives and to appropriately manage their selected retirement plan.

History: En. Sec. 41, Ch. 471, L. 1999; amd. Sec. 12, Ch. 329, L. 2005.

Part 2

Extension of Coverage by Local Government Employers

19-3-201. Contracts with political subdivisions. (1) Any municipal corporation, county, or public agency in the state may become a contracting employer and make all or specified groups of its employees members of the retirement system by a contract entered into between the board and the legislative body of the contracting employer. The contract may include any provisions that are consistent with chapter 2 and this chapter and necessary in the administration of the retirement system as it affects the contracting employer and its employees.

(2) The approval of the contract is subject to the following provisions, in addition to the other provisions of chapter 2 and this chapter:

(a) The legislative body of the contracting employer shall adopt a resolution of intention to approve the contract and containing a summary of the major provisions of the retirement system. The contract may not be approved unless the employees proposed to be included in the retirement system adopt the proposal by a majority affirmative vote in a secret ballot. The ballot at the election must include the summary of the retirement system as set forth in the resolution. The election must be conducted as prescribed by the legislative body of the contracting employer. Approval of the contract must be by the affirmative vote of two-thirds of the members of the legislative body within 40 days after the adoption of the resolution.

(b) The contract must specify that the provisions of the retirement system apply to all employees on the effective date of the contract and to all employees hired after the effective date of the contract. An employee's membership in either the defined benefit plan or the defined contribution plan is determined on an individual basis as provided in this chapter.

(c) The contract may be amended in the manner prescribed in this section for the original approval of contracts. The contract must be approved by the board. The board may disapprove of a contract if, in the board's sole discretion, the contract adversely affects the interests of the retirement system. Any amendments to the retirement system made pursuant to Montana laws immediately apply to and become a part of the contract.

(3) The termination of the contract is subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of a contracting employer shall adopt a resolution giving notice to its employees that it intends to terminate retirement system coverage.

(b) All employees covered under the retirement system must be given notice of the termination resolution and be permitted to vote for or against the resolution by secret ballot.

(c) If a majority of covered employees votes for termination, the legislative body, within 20 days after the approval of the resolution by the employees, may adopt by a two-thirds majority a resolution terminating coverage under the system effective the last day of that month and forward the resolution and a certified copy of the election results to the board.

(d) Upon receipt of the termination resolution, the board may request an actuarial valuation of the liabilities of the terminating agency to the retirement system, and the board may withhold approval of the termination of contract until satisfactory arrangements are made to provide funding for any excess accrued liabilities not previously funded by the terminating agency.

History: En. 68-1701 by Sec. 14, Ch. 323, L. 1973; R.C.M. 1947, 68-1701; amd. Sec. 2, Ch. 496, L. 1981; amd. Sec. 45, Ch. 265, L. 1993; amd. Sec. 31, Ch. 471, L. 1999; amd. Sec. 22, Ch. 562, L. 1999; amd. Sec. 13, Ch. 329, L. 2005.

19-3-202. Request by individual employee for employer to participate. Any employee who has continuously been, for a period of at least 2 years, an employee of a municipal corporation, county, or other public agency of this state which is not a contracting employer may advise the legislative body of his employer, in writing, that he wishes to participate in the retirement system. Within 30 days after receipt of such written request, the legislative body shall thereupon adopt the resolution of intention and take such action as provided for in 19-3-201.

History: En. 68-1702 by Sec. 15, Ch. 323, L. 1973; R.C.M. 1947, 68-1702.

19-3-203. Conversion of local or state retirement plan. (1) If the legislative body of any city, county, or public agency having an existing retirement, pension, or annuity fund or system, referred to as the local system, desires to make the members of the local system members of the public employees' retirement system, it may enter into a contract for that purpose with the board in the manner provided in 19-3-201. However, the employees voting, as provided in 19-3-201(2)(a), must be limited to active members of the local system, and approval requires an affirmative vote of two-thirds of the employees.

(2) Subject to the applicable provisions of this chapter, active members of the local system shall become members of either the defined benefit plan or the defined contribution plan of the retirement system and are no longer members of the local system. The pensions being paid to pensioners or annuitants of the local system on the effective date of the contract must be continued and paid at their existing rates by the public employees' retirement system. The liability for the pensions must be computed by the actuary and charged to the contracting employer. All cash and securities held by the local system must be transferred to the retirement system as of the effective date of the contract and credited to the employer. The value of the securities must be determined by the board.

(3) The trustees or other administrative head of the local system as of the effective date of the contract shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions of the active members and the relative shares of the members as of that date. The shares must be charged to the employer and credited as accumulated contributions of the members in the public employees' retirement system and administered as if the contributions had been made during membership in the retirement system. Any excess of employer credits over charges under this section must be offset, with regular interest, against future required employer contributions. Any excess of employer charges over credits under this section must be payable by the contracting employer, with regular interest, on a monthly basis as specified in the contract.

History: En. 68-1703 by Sec. 16, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1703; amd. Sec. 46, Ch. 265, L. 1993; amd. Sec. 32, Ch. 471, L. 1999.

19-3-204. Tax levy to meet employer's obligations. (1) If the required contributions to the retirement system exceed the funds available to a contracting employer from general revenue sources, the contracting employer may budget, levy, and collect annually a special tax upon the assessable property of the contracting employer in the number of cents per \$100 of assessable property as is sufficient to raise the amount estimated by the legislative body to be required to provide sufficient revenue to meet the obligation of the contracting employer to the

retirement system. The rate of taxation may be in addition to the annual rate of taxation allowed by law to be levied by the contracting employer.

(2) A person who is a member or designated beneficiary of the retirement system because of the participation of the contracting employer may maintain the appropriate action or proceeding to require the contracting employer to budget, levy, and collect the special tax authorized in subsection (1).

History: En. 68-1704 by Sec. 17, Ch. 323, L. 1973; R.C.M. 1947, 68-1704; amd. Sec. 4, Ch. 114, L. 1979; amd. Sec. 47, Ch. 265, L. 1993.

Part 3

Contributions and Refunds

19-3-315. Member's contribution to be deducted. (1) Each member's contribution is 6.9% of the member's compensation.

(2) Payment of salaries or wages less the contribution is full and complete discharge and acquittance of all claims and demands for the service rendered by members during the period covered by the payment, except their claims to the benefits to which they may be entitled under the provisions of this chapter.

(3) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(4) (a) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system.

(b) In the case of a member of the defined benefit plan, these contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) In the case of a member of the defined contribution plan, these contributions must be allocated as provided in 19-3-2117.

(5) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and compensation. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

History: En. 68-1902 by Sec. 23, Ch. 323, L. 1973; amd. Sec. 5, Ch. 128, L. 1975; R.C.M. 1947, 68-1902; amd. Sec. 4, Ch. 464, L. 1985; amd. Sec. 1, Ch. 558, L. 1989; amd. Sec. 52, Ch. 265, L. 1993; Sec. 19-3-701, MCA 1991; redes. 19-3-315 by Code Commissioner, 1993; amd. Sec. 8, Ch. 287, L. 1997; amd. Sec. 33, Ch. 471, L. 1999.

19-3-316. Employer contribution rates. (1) Each employer shall contribute to the system. Except as provided in subsection (2), the employer shall pay as employer contributions 6.9% of the compensation paid to all of the employer's employees plus any additional contribution under subsection (3), except for those employees properly excluded from membership. Of employer contributions made under this subsection for both defined benefit plan and defined contribution plan members, a portion must be allocated for educational programs as provided in 19-3-112. Employer contributions for members under the defined contribution plan must be allocated as provided in 19-3-2117.

(2) Local government and school district employer contributions must be the total employer contribution rate provided in subsection (1) minus the state contribution rates under 19-3-319.

(3) Subject to subsection (4), each employer shall contribute to the system an additional employer contribution equal to the following percentage of the compensation paid to all of the employer's employees, except for those employees properly excluded from membership:

(a) beginning July 1, 2007, 0.135%; and

(b) beginning July 1, 2009, 0.27%.

(4) (a) The board shall periodically review the additional employer contribution provided for under subsection (3) and recommend adjustments to the legislature as needed to maintain the amortization schedule set by the board for payment of the system's unfunded liabilities.

(b) The employer contribution required under subsection (3) terminates on July 1 immediately following the system's actuarial valuation if:

(i) the actuarial valuation determines that the period required to amortize the system's unfunded liabilities, including adjustments made for any benefit enhancements enacted by the legislature after the valuation, is less than 25 years; and

(ii) terminating the additional employer contribution would not cause the amortization period as of the most recent actuarial valuation to exceed 25 years.

History: En. 68-2504 by Sec. 52, Ch. 323, L. 1973; amd. Sec. 12, Ch. 128, L. 1975; R.C.M. 1947, 68-2504(part); amd. Sec. 1, Ch. 254, L. 1981; amd. Sec. 3, Ch. 549, L. 1981; amd. Sec. 2, Ch. 663, L. 1983; amd. Sec. 2, Ch. 558, L. 1989; amd. Sec. 53, Ch. 265, L. 1993; Sec. 19-3-801, MCA 1991; redes. 19-3-316 by Code Commissioner, 1993; amd. Sec. 9, Ch. 287, L. 1997; amd. Sec. 50, Ch. 51, L. 1999; amd. Sec. 34, Ch. 471, L. 1999; amd. Sec. 14, Ch. 329, L. 2005; amd. Sec. 1, Ch. 371, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 371 in (1) in second sentence inserted "plus any additional contribution under subsection (3)" and after "those" inserted "employees"; inserted (3) requiring additional employer contribution beginning July 1, 2007, and July 1, 2009; inserted (4) requiring board to periodically review contributions and providing for termination of certain employer contributions; and made minor changes in style. Amendment effective July 1, 2007.

19-3-317. State employer to include costs in budget. Every state employer shall include in its budget and request for legislative appropriations an amount necessary to defray the state's part of the costs of this chapter for its employees to the end that the legislature may make definite appropriation for the cost incurred by each employer the employees of which are within the retirement system created by this chapter.

History: En. 68-2505 by Sec. 53, Ch. 323, L. 1973; amd. Sec. 11, Ch. 99, L. 1977; R.C.M. 1947, 68-2505(2); Sec. 19-3-803, MCA 1991; redes. 19-3-317 by Code Commissioner, 1993.

19-3-318. Credit of contributions made after member becomes inactive. Contributions made on the basis of compensation earned by members after they are considered to be inactive members, as provided in 19-3-403(4), must be credited to the employer.

History: En. Sec. 68-1602 by Sec. 6, Ch. 323, L. 1973; amd. Sec. 1, Ch. 374, L. 1974; amd. Sec. 1, Ch. 16, L. 1975; amd. Sec. 1, Ch. 128, L. 1975; amd. Sec. 1, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1602(8)(c); amd. Sec. 54, Ch. 265, L. 1993; Sec. 19-3-405, MCA 1991; redes. 19-3-318 by Code Commissioner, 1993; amd. Sec. 19, Ch. 58, L. 1999; amd. Sec. 15, Ch. 329, L. 2005.

19-3-319. State contributions for local government and school district employers.

(1) The state shall contribute monthly from the general fund to the pension trust fund a sum equal to 0.1% of the compensation paid to all employees of local government entities and school districts on and after July 1, 1997, except those employees properly excluded from membership.

(2) (a) Subject to subsection (2)(b), in addition to the contribution required under subsection (1), the state shall contribute monthly from the general fund to the pension trust fund a sum equal to the following percentage of the compensation paid to all employees of school districts on and after July 1, 2007, except for those employees properly excluded from membership:

(i) beginning July 1, 2007, 0.135%; and

(ii) beginning July 1, 2009, 0.27%.

(b) The additional contribution under subsection (2)(a) terminates when the additional contribution under 19-3-316(3) terminates.

(3) The board shall certify amounts due under this section on a monthly basis, and the state treasurer shall transfer those amounts to the pension trust fund within 1 week. The payments in this section are statutorily appropriated as provided in 17-7-502.

History: En. Sec. 4, Ch. 287, L. 1997; amd. Sec. 39(1)(a), Ch. 532, L. 1997; amd. Sec. 23, Ch. 562, L. 1999; amd. Sec. 16, Ch. 329, L. 2005; amd. Sec. 2, Ch. 371, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 371 in (1) near end after "those" inserted "employees"; inserted (2) requiring certain employer contributions from state general fund beginning July 1, 2007, and July 1, 2009; and made minor changes in style. Amendment effective July 1, 2007.

Part 4 Eligibility, Membership, and Vesting

19-3-401. Membership — inactive vested members — inactive nonvested members. (1) Except as otherwise provided in this chapter, all employees must become members of the defined benefit plan on the first day of service. Each employer shall file with the

board information affecting their employees' status as members as the board may require. An employee may become a member of the defined contribution plan only as provided in Title 19, chapter 3, part 21.

(2) (a) An inactive member of the defined benefit plan with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a service retirement benefit subject to the provisions of this chapter.

(b) If an inactive vested member of the defined benefit plan chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.

(3) (a) An inactive member of the defined benefit plan with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement plan.

(b) An inactive nonvested member of the defined benefit plan is eligible only for a refund of the member's accumulated contributions.

(4) Except as otherwise provided in this chapter, a member of either the defined benefit plan or the defined contribution plan is an active member of the system and is not eligible for a refund of contributions or for benefit payments if the member either:

(a) returns to service within 30 days of termination of employment; or

(b) terminates one employment but remains employed in another position covered by the system.

(5) Time during which an employee of a school district or a public institution of higher education is absent from service during official vacation is counted as membership service in determining eligibility for retirement benefits.

History: En. 68-1601 by Sec. 5, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1601; amd. Sec. 1, Ch. 162, L. 1991; amd. Sec. 49, Ch. 265, L. 1993; amd. Sec. 12, Ch. 370, L. 1997; amd. Sec. 35, Ch. 471, L. 1999; amd. Secs. 24, 99(1)(d), Ch. 562, L. 1999; amd. Sec. 19, Ch. 429, L. 2003; amd. Sec. 17, Ch. 329, L. 2005; amd. Sec. 6, Ch. 128, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 128 in (5) near middle after "school district" inserted "or a public institution of higher education"; and made minor changes in style. Amendment effective October 1, 2007.

19-3-402. Federally subsidized employees eligible. A person whose compensation is paid either fully or in part from federal funds but who is not subject to the federal retirement system is considered an employee and is entitled to all benefits and is required to make all employee contributions under the retirement system based upon the full salary received by such employee, including that portion of salary paid from federal funds.

History: En. 68-2510 by Sec. 58, Ch. 323, L. 1973; amd. Sec. 1, Ch. 445, L. 1977; R.C.M. 1947, 68-2510; amd. Sec. 1, Ch. 458, L. 1983.

19-3-403. Exclusions from membership. The following persons may not become members of the retirement system:

(1) inmates of state institutions;

(2) persons in state institutions principally for the purpose of training but who receive compensation;

(3) independent contractors;

(4) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision of the state and who are receiving credit in the other system for employment. It is the purpose of this subsection to prevent a person from receiving credit for the same employment in two retirement systems supported wholly or in part by public funds, except when the service qualifies and is applied for and the service credit is purchased pursuant to 19-3-503. A member of the retirement system who, because of employment by the state, is required to become a member of any other system described in this subsection is considered, with regard to that employment, an inactive member of the retirement system, except that the member is not eligible for retirement or a refund of the member's accumulated contributions. Exclusion under this subsection is subject to the following exceptions:

(a) The employees of an employer who has entered into a collective bargaining agreement involving a multiemployer pension plan qualified by the internal revenue service and that

requires contributions by the employer for the members of the bargaining unit remain eligible, if otherwise qualified, for membership in the retirement system.

(b) For the purpose of this subsection (4), persons receiving pensions, retirement benefits, or other payments from any source on account of employment other than as an employee are not considered, because of receipt, members of any other retirement or pension system.

(5) court commissioners, elected officials, or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(6) full-time students employed at and attending the same public elementary school, high school, community college, or unit of the state university system, except that a person excluded from membership as a student of a public community college or a unit of the state university system who later becomes an active member by otherwise becoming an employee may affirmatively exercise the option of purchasing the service credit excluded by this subsection by applying to the board in writing after becoming an active member and become eligible to receive service credit for the excluded service under the provisions of 19-3-505.

History: En. Sec. 68-1602 by Sec. 6, Ch. 323, L. 1973; amd. Sec. 1, Ch. 374, L. 1974; amd. Sec. 1, Ch. 16, L. 1975; amd. Sec. 1, Ch. 128, L. 1975; amd. Sec. 1, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1602(1) thru (8)(a), (9) thru (12); amd. Sec. 1, Ch. 149, L. 1979; amd. Sec. 1, Ch. 60, L. 1981; amd. Sec. 1, Ch. 142, L. 1981; amd. Sec. 1, Ch. 147, L. 1983; amd. Sec. 1, Ch. 303, L. 1985; amd. Sec. 1, Ch. 275, L. 1991; amd. Sec. 51, Ch. 265, L. 1993; amd. Sec. 9, Ch. 308, L. 1995; amd. Sec. 9, Ch. 412, L. 1995; amd. Sec. 25, Ch. 562, L. 1999; amd. Sec. 19, Ch. 99, L. 2001; amd. Sec. 20, Ch. 429, L. 2003; amd. Sec. 18, Ch. 329, L. 2005.

19-3-411. Eligible employees. Subject to 19-3-402, 19-3-403, and 19-3-412, eligible employees under the system who are not covered by a separate retirement system under this title include the following:

(1) any employee of the state of Montana, its university system or any of the colleges, schools, components, or units of the university system; and

(2) any employee of a contracting employer eligible to participate under the contract between the board and the contracting employer under 19-3-201.

History: En. Sec. 48, Ch. 265, L. 1993.

19-3-412. Optional membership. (1) Except as provided in 5-2-304 and subsection (2) of this section, the following employees and elected officials in covered positions shall elect either to become active members of the retirement system or to decline this optional membership by filing an irrevocable, written application with the board in the manner prescribed in subsection (3):

(a) elected officials of the state or local governments, including individuals appointed to fill the unexpired term of elected officials, who:

(i) are paid on a salary or wage basis rather than on a per diem or other reimbursement basis; or

(ii) were members receiving retirement benefits under the defined benefit plan or a distribution under the defined contribution plan at the time of their election;

(b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working 10 months or less for the legislative branch to perform work related to the legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes.

(2) A member who is elected to a local government position in which the member works less than 960 hours in a calendar year may, within 180 days of being elected, decline optional membership with respect to the member's elected position.

(3) (a) The board shall prescribe the form of the written application required pursuant to subsection (1) and provide written application forms to each employer.

(b) Each employee or elected official in a position covered under subsection (1) shall obtain the written application form from the employer and complete and return it to the board.

(c) The written application must be filed with the board:

(i) for an employee described in subsection (1)(d), within 300 days of the commencement of the employee's employment; and

(ii) for an employee or elected official described in subsection (1)(a), (1)(b), (1)(c), (1)(e), or (1)(f), within 180 days of the commencement of the employee's or elected official's employment.

(d) The employer shall retain a copy of the employee's or elected official's written application.

(4) If the employee or elected official fails to file the written application required under subsection (1) with the board within the time allowed in subsection (3), the employee or elected official waives membership.

(5) An employee or elected official who declines optional membership may not receive membership service or service credit for the employment for which membership was declined.

(6) An employee or elected official who declined optional membership but later becomes a member may purchase service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Purchase of service credit pursuant to this subsection must comply with 19-3-505.

(7) Except as provided in subsection (2), membership in the retirement system is not optional for an employee or elected official who is already a member. Upon employment in a position for which membership is optional:

(a) a member who was an active member before the employment remains an active member;

(b) a member who was an inactive member before the employment becomes an active member; and

(c) a member who was a retired member before the employment is subject to part 11 of this chapter.

(8) (a) An employee or elected official who declines membership for a position for which membership is optional may not later become a member while still employed in that position.

(b) If, after a break in service of 30 days or more, an employee who was employed in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership.

(c) If the break in service is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.

(9) An employee accepting a position that requires membership must become a member even if the employee previously declined membership and did not have a 30-day break in service.

History: En. Sec. 50, Ch. 265, L. 1993; amd. Sec. 1, Ch. 208, L. 1997; amd. Sec. 13, Ch. 370, L. 1997; amd. Sec. 51, Ch. 51, L. 1999; amd. Sec. 20, Ch. 58, L. 1999; amd. Sec. 26, Ch. 562, L. 1999; amd. Sec. 20, Ch. 99, L. 2001; amd. Sec. 1, Ch. 285, L. 2001; amd. Sec. 1, Ch. 357, L. 2001; amd. Sec. 1, Ch. 402, L. 2003; amd. Sec. 21, Ch. 429, L. 2003; amd. Sec. 19, Ch. 329, L. 2005; amd. Sec. 1, Ch. 41, L. 2007; amd. Sec. 7, Ch. 128, L. 2007; amd. Sec. 2, Ch. 334, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 41 in (1)(d) after "working" substituted "10 months" for "6 months"; deleted former (2)(a) and (2)(b) that read: "(a) Except as provided in subsection (2)(b), employees and officials described in subsections (1)(a) through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to file an irrevocable, written application with the board.

(b) A legislator may also become a member as of the date prior to December 30, 2000, that the legislator filed an irrevocable written application with the board to become a member and paid the employee share of contributions determined by the board to be required to purchase the legislator's prior service credit. However, the legislator shall purchase at least 5 years of service credit or, if the legislator has less than 5 years of membership service, service credit equal to all of the legislator's membership service. The legislative branch is responsible for paying the amount determined by the board to be the employer's share of contributions required to purchase a legislator's service credit under this subsection (2)(b)"; inserted (3)(c)(i) requiring filing of an application within 300 days of commencement of employment of an employee working 10 months or less; in (3)(c)(ii) at beginning inserted "for an employee or elected official described in subsection (1)(a), (1)(b), (1)(c), (1)(e), or (1)(f)"; and made minor changes in style. Amendment effective March 22, 2007.

Chapter 128 in (1)(a) at end inserted "including individuals appointed to fill the unexpired term of elected officials"; deleted former (2)(a) that read: "(2) (a) Except as provided in subsection (2)(b), employees and officials described in subsections (1)(a) through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to file an irrevocable, written application with the board"; in (2) near beginning after "who" deleted "after April 17, 2003"; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 334 in (1) in exception clause inserted "5-2-304 and"; and made minor changes in style. Amendment effective April 27, 2007.

Retroactive Applicability: Section 5, Ch. 334, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to January 1, 2003."

Part 5 Service Credit

19-3-501. Absence not included in service. Except as otherwise provided in this part, time during which a member is absent from service may not be included in the calculation of service credit.

History: En. 68-1604 by Sec. 8, Ch. 323, L. 1973; amd. Sec. 2, Ch. 99, L. 1977; R.C.M. 1947, 68-1604; amd. Sec. 55, Ch. 265, L. 1993.

19-3-503. Application to purchase military service. (1) (a) Except as provided in subsection (1)(b) and subject to 19-3-514, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's active service in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945.

(b) A member is not eligible to purchase active military service credit and membership service under subsection (1)(a) if the member:

(i) has retired from active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, with a military service retirement benefit based on that military service;

(ii) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(iii) is eligible to receive credit for that service in any other retirement system or plan.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-3-514, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation.

History: En. 68-1605.1 by Sec. 10, Ch. 323, L. 1973; amd. Sec. 2, Ch. 128, L. 1975; R.C.M. 1947, 68-1605.1; amd. Sec. 5, Ch. 609, L. 1989; amd. Sec. 56, Ch. 265, L. 1993; amd. Sec. 10, Ch. 287, L. 1997; amd. Sec. 21, Ch. 58, L. 1999; amd. Sec. 1, Ch. 494, L. 1999; amd. Sec. 21, Ch. 99, L. 2001; amd. Sec. 1, Ch. 26, L. 2003; amd. Sec. 1, Ch. 289, L. 2003; amd. Secs. 22, 122(1), Ch. 429, L. 2003.

19-3-504. Absence due to illness or injury. (1) Time, not to exceed 5 years, during which a member is absent from service because of injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined to have arisen out of and in the course of the member's employment. However, the member may not earn service credits for this period unless the member complies with subsections (2) and (3), in which case the absence is considered as time spent in service for both service credit and membership service.

(2) (a) A member absent because of an employment-related injury entitling the member to workers' compensation payments may, upon the member's return to service, contribute to the retirement system an amount equal to the contributions that would have been made by the member to the system on the basis of the member's compensation at the commencement of the member's absence plus regular interest accruing from 1 year from the date after the member returns to service to the date the member contributes for the period of absence.

(b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute employer contributions for the period of absence based on the salary as calculated in subsection (2)(a) and may pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (2)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(3) At some time after returning to service, a member shall file with the board a written notice of the member's intent to pay the contributions under subsection (2).

(4) A member loses the right to contribute for an absence under this section if all of the member's accumulated contributions are refunded pursuant to 19-2-602 or for the period of time during which retirement benefits are received if the member retires during the absence.

History: En. 68-1606 by Sec. 11, Ch. 323, L. 1973; amd. Sec. 1, Ch. 300, L. 1977; R.C.M. 1947, 68-1606; amd. Sec. 1, Ch. 311, L. 1983; amd. Sec. 1, Ch. 103, L. 1987; amd. Sec. 57, Ch. 265, L. 1993; amd. Sec. 14, Ch. 370, L. 1997; amd. Sec. 22, Ch. 58, L. 1999; amd. Sec. 23, Ch. 429, L. 2003.

19-3-505. Purchase of previous employment with employer. (1) Subject to the provisions of this section, a member who has employment for which optional membership was declined or employment with an employer prior to the employer's contract coverage may file a written application with the board to purchase all or a portion of the employment for service credit and membership service. The application must include salary information certified by the member's employer or former employer.

(2) (a) A purchase under this section is subject to the board's approval.

(b) If the board approves the request, the member shall pay all contributions that the member would have contributed during the period of employment as if the employment had been covered by the retirement system and shall pay the regular interest that would have accumulated on the amount to the time of payment.

(c) The employer shall establish a policy as to the payment of retroactive employer contributions or retroactive employer contributions and regular interest and apply this policy indiscriminately for all employees and former employees. All employee appeals of discrimination are subject to the determination of the board. All successful appeals obligate the employer to pay the employer and employee contributions with accrued interest for that employee filing the appeal with the board. Each appeal must be heard on its individual merits and may not bind the employer to pay all retroactive payments for all former and present employees.

(d) If the employer establishes a policy under subsection (2)(c) of nonpayment, the member shall pay the amount not paid by the employer in order to receive service credit and membership service for the period of employment.

History: En. 68-1607 by Sec. 12, Ch. 323, L. 1973; amd. Sec. 2, Ch. 190, L. 1974; amd. Sec. 3, Ch. 128, L. 1975; amd. Sec. 1, Ch. 89, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1607; amd. Sec. 2, Ch. 103, L. 1987; amd. Sec. 58, Ch. 265, L. 1993; amd. Sec. 23, Ch. 58, L. 1999; amd. Sec. 27, Ch. 562, L. 1999; amd. Sec. 22, Ch. 99, L. 2001; amd. Sec. 24, Ch. 429, L. 2003; amd. Sec. 20, Ch. 329, L. 2005.

19-3-510. Employment in United States government. (1) A member who is assigned to an agency of the United States government under the Intergovernmental Personnel Act of 1970, 42 U.S.C. 4701, et seq., may purchase the federal employment as service credit in the retirement system under subsection (2) if:

(a) the member has accrued 5 years or more of membership service in the retirement system; and

(b) the member returns to full-time service with the former state or local government employer for at least 1 year after completing employment in the United States government.

(2) A member of the retirement system who is assigned to an agency of the United States government has the option to:

(a) continue the member's payments into the pension trust fund; or

(b) purchase service credit for the period of federal employment under this section within 2 years after return to service under the retirement system.

(3) Salary earned while on assignment to an agency of the United States government must be considered compensation for the purposes of the retirement system and may be included in the determination of highest average compensation if the highest average compensation does not exceed 100% of the member's highest annual compensation earned as a state or local government employee.

History: En. Sec. 1, Ch. 261, L. 1981; amd. Sec. 60, Ch. 265, L. 1993; amd. Sec. 24, Ch. 99, L. 2001; amd. Sec. 25, Ch. 429, L. 2003; amd. Sec. 8, Ch. 128, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 128 in (1) near middle substituted "the Intergovernmental Personnel Act of 1970, 42 U.S.C. 4701, et seq." for "Title IV, the Intergovernmental Personnel Act of 1970"; and made minor changes in style. Amendment effective October 1, 2007.

19-3-511. Transfer and purchase of service credits and contributions from teachers' retirement system. (1) Except as provided in subsection (3)(b), an active member may, at any time before retirement, file a written application with the board to purchase in the public employees' retirement system the member's service in the teachers' retirement system to the extent that the member has either received or is eligible to receive a refund for the service.

(2) The cost of purchasing service credit under this section is the sum of subsections (2)(a) and (2)(b) as follows:

(a) The teachers' retirement system shall transfer an amount equal to 72% of the amount payable by the member.

(b) The member shall pay either directly or by transferring contributions on account with the teachers' retirement system an amount equal to the member's accumulated contributions at the time that active membership was terminated with the teachers' retirement system, plus accrued interest. Interest must be calculated from the date of termination until payment is received by the public employees' retirement system, based on the interest tables in use by the teachers' retirement system.

(3) (a) The amount of service credit granted in subsection (1) must be on a month-by-month basis.

(b) Service credit transferred from the teachers' retirement system is subject to the provisions and limitations of 19-3-514, except as provided in subsection (3)(c).

(c) Active service transferred from the teachers' retirement system or refunded service from the teachers' retirement system that is eligible to be purchased under this section is not subject to service credit limitations.

(4) Subject to the provisions of 19-2-403, the board is the sole authority in determining the amount of service credit that a member may purchase under this section and the amount paid to the retirement system under subsection (2).

(5) If an active member who has service credit in the teachers' retirement system dies before the member purchases this service credit in the public employees' retirement system and if the service credit from both systems, when combined, entitles the member's designated beneficiary to a survivorship benefit, the payment of the survivorship benefit is the liability of the public employees' retirement system. Before payment of the survivorship benefit, the teachers' retirement board shall transfer to the public employees' retirement system the contributions necessary to purchase this service credit in the public employees' retirement system, as provided in subsection (2).

(6) If the board determines that a member was erroneously classified and reported to the teachers' retirement system, the member's accumulated contributions and service credit, together with the employer contributions plus interest, must be transferred to the public employees' retirement system. Employee and employer contributions due as calculated under 19-3-315 and 19-3-316 are the liability of the employee and the employing entity, respectively, where the error occurred. For the period of time that the employer contributions are held by the teachers' retirement system, interest paid on employer contributions transferred under this subsection must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request.

History: En. Sec. 1, Ch. 290, L. 1983; amd. Sec. 1, Ch. 690, L. 1989; amd. Sec. 1, Ch. 64, L. 1991; amd. Sec. 61, Ch. 265, L. 1993; amd. Sec. 11, Ch. 412, L. 1995; amd. Sec. 15, Ch. 370, L. 1997; amd. Sec. 25, Ch. 99, L. 2001; amd. Sec. 26, Ch. 429, L. 2003.

19-3-512. Purchase of service credit from other public retirement systems. (1) Subject to 19-3-514, a member with at least 5 years of membership service in the public employees' retirement system may purchase service credit for:

(a) public service employment covered under a public retirement system other than a system provided for in Title 19 for which the member received a refund of the member's membership contribution; and

(b) public service employment that occurred before the public employer adopted a public retirement system.

(2) A member may not purchase more than 5 years of service credit under this section. To purchase this service credit, a member shall:

(a) at any time before retirement, file a written application with the board; and

(b) pay the actuarial cost of the service credit in the public employees' retirement system, as determined by the board, based on the system's most recent actuarial valuation.

(3) Service credit purchased under this section may not be used to qualify a member to purchase military service under 19-3-503.

(4) Service credit purchased under this section may not be used in calculating a member's retirement benefit unless the member's last 5 years of service credit were earned under the public employees' retirement system. If, upon the member's retirement, the member's purchased service credit cannot be used in calculating the member's retirement benefit, the member must receive a refund of the amount paid to purchase the service credit, plus regular interest on that amount.

History: En. Sec. 1, Ch. 11, L. 1987; amd. Sec. 1, Ch. 196, L. 1989; amd. Sec. 62, Ch. 265, L. 1993; amd. Sec. 11, Ch. 287, L. 1997; amd. Sec. 24, Ch. 58, L. 1999; amd. Sec. 29, Ch. 562, L. 1999; amd. Sec. 26, Ch. 99, L. 2001; amd. Sec. 27, Ch. 429, L. 2003.

19-3-513. Application to purchase additional service. (1) Subject to 19-3-514, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service.

(2) To purchase this service credit under this section, a member shall pay the actuarial cost of the service credit, based on the system's most recent actuarial valuation.

(3) Service credit purchased under this section is not membership service and may not be used to qualify a member for service retirement.

History: En. Sec. 1, Ch. 73, L. 1989; amd. Sec. 17, Ch. 16, L. 1991; amd. Sec. 63, Ch. 265, L. 1993; amd. Sec. 12, Ch. 287, L. 1997; amd. Sec. 25, Ch. 58, L. 1999; amd. Sec. 2, Ch. 494, L. 1999; amd. Sec. 27, Ch. 99, L. 2001; amd. Sec. 28, Ch. 429, L. 2003.

19-3-514. Service purchase limit — exception. (1) Except as provided in subsection (2), a member may not purchase more than a combined total of 5 years under 19-3-503, 19-3-511(3)(b), 19-3-512, 19-3-513, and 19-3-515.

(2) A member who has purchased service credit under 19-3-503 or 19-3-512 on or before January 1, 1990, and who elects to purchase service credit under 19-3-513 must receive credit for the full months of service credit purchased on or before January 1, 1990.

History: En. Secs. 28, 29, Ch. 99, L. 2001; amd. Sec. 2, Ch. 292, L. 2003; amd. Sec. 29, Ch. 429, L. 2003.

19-3-515. Purchase of federal volunteer service. (1) Subject to 19-3-514, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase membership service and service credit for up to 5 years of the member's service as a volunteer in a United States service program, such as the peace corps, or successful completion of a term of service in a national service position as described in the National and Community Service Act of 1990, 42 U.S.C. 12501, et seq.

(2) Purchase of membership service and service credit under this section is subject to the board's verification of the member's volunteer service.

(3) To purchase this membership service and service credit, the member shall pay the actuarial cost of the service credit, based on the system's most recent actuarial valuation.

History: En. Sec. 1, Ch. 292, L. 2003.

19-3-521. Service credit for legislative members. A member of the legislature of Montana must receive membership service and service credit for that portion of each year for which the member pays regular contributions.

History: En. Sec. 65, Ch. 265, L. 1993; amd. Sec. 30, Ch. 562, L. 1999; amd. Sec. 30, Ch. 429, L. 2003.

19-3-522. Nonapplication of part to defined contribution plan. Except as otherwise provided in chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

History: En. Sec. 40, Ch. 471, L. 1999.

Part 9

Service Retirement Benefits

19-3-901. Eligibility for service retirement. (1) A member who has attained the age of 60 and has 5 years of membership service is eligible for service retirement. A member who has attained age 65 while employed in a position covered by a public employees' retirement system is eligible for service retirement regardless of the member's years of membership service. A member who has 30 years or more of membership service is eligible for service retirement regardless of the member's age.

(2) In each of the circumstances described in subsection (1), the member has attained normal retirement age.

History: En. 68-2001 by Sec. 29, Ch. 323, L. 1973; amd. Sec. 8, Ch. 128, L. 1975; R.C.M. 1947, 68-2001(1); amd. Sec. 2, Ch. 162, L. 1991; amd. Sec. 66, Ch. 265, L. 1993; amd. Sec. 30, Ch. 99, L. 2001.

19-3-902. Eligibility for early retirement. A member who is not eligible for service retirement but has attained age 50 and has 5 years of membership service is eligible for early retirement. A member who has completed 25 years or more of membership service is eligible for early retirement.

History: En. 68-2001 by Sec. 29, Ch. 323, L. 1973; amd. Sec. 8, Ch. 128, L. 1975; R.C.M. 1947, 68-2001(2); amd. Sec. 6, Ch. 496, L. 1981; amd. Sec. 67, Ch. 265, L. 1993.

19-3-903. Repealed. Sec. 39, Ch. 370, L. 1997.

History: En. 68-2002 by Sec. 30, Ch. 323, L. 1973; amd. Sec. 11, Ch. 332, L. 1977; R.C.M. 1947, 68-2002; amd. Sec. 1, Ch. 53, L. 1983; amd. Sec. 2, Ch. 196, L. 1989; amd. Sec. 68, Ch. 265, L. 1993.

19-3-904. Amount of service retirement benefit. (1) Except as provided in subsection (2), the monthly amount of service retirement benefit payable to a member following retirement is the greater of subsection (1)(a) or (1)(b) as follows:

(a) one fifty-sixth of the member's highest average compensation multiplied by the number of years of the member's total service credit; or

(b) a monthly benefit that is the sum of:

(i) the actuarial equivalent of double the member's regular contributions and regular interest; plus

(ii) the actuarial equivalent of any additional contributions and regular interest.

(2) For a member with at least 25 years of membership service, the monthly amount of service retirement benefit must be equal to one-fiftieth of the member's highest average compensation multiplied by the number of years of the member's total service credit instead of the amount calculated under subsection (1)(a).

History: En. 68-2003 by Sec. 31, Ch. 323, L. 1973; amd. Sec. 9, Ch. 128, L. 1975; amd. Sec. 2, Ch. 241, L. 1977; amd. Sec. 12, Ch. 332, L. 1977; R.C.M. 1947, 68-2003; amd. Sec. 2, Ch. 73, L. 1989; amd. Sec. 3, Ch. 558, L. 1989; amd. Sec. 69, Ch. 265, L. 1993; amd. Sec. 31, Ch. 562, L. 1999; amd. Sec. 31, Ch. 99, L. 2001; amd. Sec. 1, Ch. 217, L. 2001; amd. Sec. 31, Ch. 429, L. 2003.

19-3-905. Adjustment of benefit for certain members. The minimum retirement benefit payable to a vested member who has attained age 70 in service is an annuity of \$40 per month.

History: En. 68-2004 by Sec. 32, Ch. 323, L. 1973; amd. Sec. 10, Ch. 128, L. 1975; amd. Sec. 13, Ch. 332, L. 1977; R.C.M. 1947, 68-2004; amd. Sec. 3, Ch. 196, L. 1989; amd. Sec. 70, Ch. 265, L. 1993.

19-3-906. Early retirement benefit. (1) The amount of retirement benefit payable to a member following early retirement is the actuarial equivalent of the accrued portion of the service retirement benefit that would have been payable to the member commencing at age 60 or upon completion of 30 years of membership service pursuant to 19-3-904.

(2) The early retirement benefit must be determined as prescribed in 19-3-904, with the exception that the benefit must be reduced as follows:

(a) by 1/2 of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 30 years of membership service; and

(b) by 3/10 of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the

date on which the member would have retired had the member attained 60 years of age or had the member completed 30 years of membership service.

(3) The actuarial reduction provided for in this section must be adjusted for any additional service credit purchased under 19-3-513.

History: En. 68-2005 by Sec. 33, Ch. 323, L. 1973; R.C.M. 1947, 68-2005; amd. Sec. 7, Ch. 496, L. 1981; amd. Sec. 60, Ch. 370, L. 1987; amd. Sec. 3, Ch. 73, L. 1989; amd. Sec. 71, Ch. 265, L. 1993; amd. Sec. 32, Ch. 429, L. 2003.

19-3-907. Renumbered 19-3-520. Code Commissioner, 1993.

19-3-908. Retirement incentive program — window of eligibility. (1) Except as provided in subsection (4), a person who is an active member on February 1, 1993, and who voluntarily terminates service or who is involuntarily terminated from service because of a reduction in force on or after June 25, 1993, but before January 1, 1994, and who is eligible for a normal service retirement under 19-3-901 or early retirement under 19-3-902 is entitled to the retirement incentive provided in subsection (2).

(2) (a) The employer of an eligible member under subsection (1) shall pay the total cost of purchasing up to 3 years of additional service credit that the member is qualified to purchase under 19-3-513.

(b) The department of revenue shall pay the cost of purchasing up to 3 years of additional service credit for qualifying county assessors and deputy assessors eligible under subsection (1) whose employing county has not elected for participation in the incentive program as provided in subsection (4).

(c) A member is entitled to a refund for that portion of previously purchased additional service that would otherwise cause the member to be unqualified to receive all or part of the additional service credit provided in this section.

(3) An active member who is involuntarily terminated from service because of a reduction in force on or after March 1, 1993, but before June 25, 1993, and who, if the member had not been terminated from service, would have been eligible under subsection (1) for the retirement incentive is entitled to the retirement incentive under subsection (2) if the member was, at the time of termination from service, eligible for service retirement under 19-3-901 or early retirement under 19-3-902 and retires on or after June 25, 1993.

(4) Subject to subsection (2)(b), a contracting employer's participation in the incentive program described in this section is optional. A contracting employer may elect to provide the incentive by filing with the board a written notice of election on or before June 1, 1993, and complying with rules adopted pursuant to subsection (6).

(5) County assessors and deputy assessors are eligible for the incentive program even if the employing county has not elected to participate in the incentive program.

(6) The board may allow an employer to pay the contributions required under subsection (2)(a) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403. The board shall adopt rules to implement the provisions of this section.

(7) A member who has received additional service under this section and who returns to employment for the same jurisdiction for 960 or more hours in a calendar year in a position covered by the public employees' retirement system or for 600 or more hours in a calendar year in a position covered under any other retirement system shall forfeit the additional service. The employer's contributions to purchase that member's additional service credit, minus any retirement benefits already paid, must be refunded to the employer. For purposes of this subsection, all agencies of the state, including the university system, are considered the same jurisdiction and other public employers contracting with the retirement system are each considered separate jurisdictions.

History: En. Sec. 1, Ch. 567, L. 1993; amd. Sec. 127, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 66, L. 2001; amd. Sec. 33, Ch. 429, L. 2003; amd. Sec. 21, Ch. 329, L. 2005.

19-3-909. Nonapplication of part to defined contribution plan. Except as otherwise provided in chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

History: En. Sec. 40, Ch. 471, L. 1999.

Part 10

Disability Retirement Benefits

19-3-1001. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(2).

19-3-1002. Eligibility for disability retirement. (1) Except as provided in subsections (2) and (3), a member entering service prior to February 24, 1991, who is not eligible for service retirement or early retirement but who has at least 5 years of membership service and has become disabled while an active member is eligible for disability retirement, as provided in 19-3-1008.

(2) An active member who is 60 years of age or older and who has completed 5 years of membership service and has had a duty-related accident forcing the member to terminate employment but who has not received or is ineligible to receive workers' compensation benefits under Title 39, chapter 71, for the duty-related accident may conditionally waive the member's eligibility for a service retirement in order to be eligible for disability retirement. The waiver is effective only upon approval by the board of the member's written application for disability retirement. The board shall determine whether a member has become disabled. The board may request any information on file with the state compensation insurance fund concerning any duty-related accident. If information is not available, the board may request and the state fund shall then provide an investigative report on the disabling accident.

(3) (a) A member in service on February 24, 1991, has a one-time election to be covered for disability purposes under the provisions of 19-3-1008(2). This election is irrevocable and must be made in writing by the member no later than December 31, 1991. Coverage under the provisions of 19-3-1008(2) commences on the date the completed written election is received by the board or its designated representative. To be eligible for disability benefits under the provisions of this part, a member must have completed 5 years of membership service and must have become disabled while an active member.

(b) An individual becoming a member after February 24, 1991, who has completed 5 years of membership service and has become disabled while an active member is covered for disability purposes under the provisions of 19-3-1008(2) or (3).

History: En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(1); amd. Sec. 2, Ch. 311, L. 1983; amd. Sec. 56, Ch. 613, L. 1989; amd. Sec. 1, Ch. 49, L. 1991; amd. Sec. 72, Ch. 265, L. 1993; amd. Sec. 14, Ch. 630, L. 1993; amd. Sec. 32, Ch. 99, L. 2001; amd. Sec. 2, Ch. 217, L. 2001; amd. Sec. 34, Ch. 429, L. 2003; amd. Sec. 22, Ch. 329, L. 2005.

19-3-1003. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(3).

19-3-1004. Repealed. Sec. 236, Ch. 265, L. 1993.

History: En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(4).

19-3-1005. Application for disability retirement benefit. The board shall grant a disability retirement benefit to any active or inactive member who has fulfilled the eligibility requirements of 19-3-1002 and filed the appropriate written application with the board. An application may be filed on a member's behalf by the head of the office or department in which the member is or was last employed, by any other person on behalf of the member, or by the board upon its own motion. The application must be filed within 4 months after the member's termination from employment unless the member is disabled continuously from the date of termination from employment to the date of the application.

History: En. 68-2102 by Sec. 35, Ch. 323, L. 1973; R.C.M. 1947, 68-2102(part); amd. Sec. 73, Ch. 265, L. 1993; amd. Sec. 32, Ch. 562, L. 1999; amd. Sec. 33, Ch. 99, L. 2001; amd. Sec. 23, Ch. 329, L. 2005.

19-3-1006. Repealed. Sec. 39, Ch. 370, L. 1997.

History: En. 68-2102 by Sec. 35, Ch. 323, L. 1973; R.C.M. 1947, 68-2102(part); amd. Sec. 74, Ch. 265, L. 1993.

19-3-1007. Benefit for duty-related disability. (1) The retirement benefit payable to a member eligible for disability retirement for duty-related reasons and granted prior to July 1, 1977, is 50% of the member's highest average compensation.

(2) A retired member receiving a disability retirement benefit on July 1, 1977, who has previously been granted a duty-related disability under provisions in effect on June 30, 1977, is subject to the provisions of this section after July 1, 1977.

History: En. 68-2103 by Sec. 36, Ch. 323, L. 1973; amd. Sec. 7, Ch. 99, L. 1977; amd. Sec. 4, Ch. 241, L. 1977; R.C.M. 1947, 68-2103; amd. Sec. 55, Ch. 613, L. 1989; amd. Sec. 75, Ch. 265, L. 1993; amd. Sec. 34, Ch. 99, L. 2001.

19-3-1008. Benefit for disability. (1) The monthly amount of the disability retirement benefit payable to a member under the provisions of 19-3-1002(1) is the greater of subsection (1)(a) or (1)(b) as follows:

(a) 90% of one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513; or

(b) a retirement benefit equal to 25% of the member's highest average compensation.

(2) Except as provided in subsection (3), the monthly amount of retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(3) is a retirement benefit equal to one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513.

(3) The monthly amount of retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(3) who has at least 25 years of membership service is a retirement benefit equal to one-fiftieth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513.

(4) Subject to the provisions of part 11 of this chapter, a retired member receiving a disability retirement benefit on February 24, 1991, who has previously been granted a disability retirement benefit under the provisions of this section will continue to receive the monthly disability retirement benefit as calculated prior to February 24, 1991, subject to any postretirement or cost-of-living increases granted by the legislature.

History: En. 68-2104 by Sec. 37, Ch. 323, L. 1973; amd. Sec. 5, Ch. 241, L. 1977; amd. Sec. 14, Ch. 332, L. 1977; R.C.M. 1947, 68-2104; amd. Sec. 4, Ch. 73, L. 1989; amd. Sec. 4, Ch. 558, L. 1989; amd. Sec. 2, Ch. 49, L. 1991; amd. Sec. 76, Ch. 265, L. 1993; amd. Sec. 35, Ch. 99, L. 2001; amd. Sec. 3, Ch. 217, L. 2001; amd. Sec. 35, Ch. 429, L. 2003.

19-3-1009 through 19-3-1014 reserved.

19-3-1015. Medical examination of disability retiree — cancellation and reinstatement. (1) The board may, in its discretion, require a disabled member to undergo a medical examination. The examination must be made by a physician or surgeon appointed by the board, at a place mutually agreed upon by the retired member and the board. Upon the basis of the examination, the board shall determine whether the disabled member is unable, by reason of physical or mental incapacity, to perform the essential elements of either the position held by the member when the member retired or the position proposed to be assigned to the member. If the board determines that the member is not incapacitated or if the member refuses to submit to a medical examination, the member's disability retirement benefit must be canceled.

(2) If the board determines that a disabled member should no longer be subject to medical review, the board may grant service retirement status to the member without recalculating the monthly benefit. The board shall notify the member in writing as to the change in status. If the disabled member disagrees with the board's determination, the member may file a written application with the board requesting that the board reconsider its action. The written application for reconsideration must be filed within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsections (3)(b) and (3)(c), a member whose disability retirement benefit is canceled because the board has determined that the member is no longer incapacitated must be reinstated to the position held by the member immediately before the member's retirement or to a position in a comparable pay and benefit category with duties within the member's capacity if the member was an employee of the state or of the university. If the

member was an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the disability retirement benefit has been canceled and that the former employee is eligible for reinstatement to duty. The fact that the former employee was retired for disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have.

(b) A member who is employed by an employer forfeits any right to reinstatement provided by this section.

(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.

(4) If a member whose disability retirement benefit is canceled is not reemployed in a position subject to the retirement system, the member is considered, for the purposes of 19-2-602, to have terminated service coincident with the commencement of the member's retirement benefit.

History: En. 68-2201 by Sec. 38, Ch. 323, L. 1973; amd. Sec. 8, Ch. 99, L. 1977; R.C.M. 1947, 68-2201; amd. Sec. 1, Ch. 138, L. 1989; amd. Sec. 77, Ch. 265, L. 1993; Sec. 19-3-1102, MCA 1991; redes. 19-3-1015 by Code Commissioner, 1993; amd. Sec. 12, Ch. 412, L. 1995; amd. Sec. 17, Ch. 370, L. 1997; amd. Sec. 33, Ch. 562, L. 1999; amd. Sec. 36, Ch. 99, L. 2001; amd. Sec. 36, Ch. 429, L. 2003; amd. Sec. 24, Ch. 329, L. 2005.

19-3-1016. Nonapplication of part to defined contribution plan. Except as otherwise provided in chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

History: En. Sec. 40, Ch. 471, L. 1999.

Part 11

Reemployment of Retired Members

19-3-1103. Disability benefit reduced by earnings. (1) (a) If the recipient of a disability retirement benefit engages in a gainful occupation during any month other than in a position covered by the retirement system, the amount of the recipient's retirement benefit for that month must be reduced to an amount that, when added to the compensation earned by the recipient in that occupation, does not exceed the amount of the recipient's monthly compensation at the time of the recipient's retirement.

(b) The board shall annually adjust the recipient's monthly compensation as it was at the time of retirement by an inflationary factor if the recipient has been receiving a disability retirement benefit for more than 36 consecutive months.

(2) Benefit adjustments granted by the legislature may not be included in calculations required under this section.

History: En. 68-2202 by Sec. 39, Ch. 323, L. 1973; amd. Sec. 4, Ch. 190, L. 1974; R.C.M. 1947, 68-2202; amd. Sec. 8, Ch. 496, L. 1981; amd. Sec. 1, Ch. 23, L. 1987; amd. Sec. 89, Ch. 265, L. 1993; amd. Sec. 34, Ch. 562, L. 1999; amd. Sec. 37, Ch. 99, L. 2001.

19-3-1104. Cancellation of disability retirement benefit upon reemployment. A person receiving a disability retirement benefit who becomes an employee is considered reinstated to service from retirement, and the person's disability retirement benefit must be canceled.

History: En. 68-2204 by Sec. 41, Ch. 323, L. 1973; amd. Sec. 6, Ch. 190, L. 1974; R.C.M. 1947, 68-2204(part); amd. Sec. 86, Ch. 265, L. 1993; amd. Sec. 104, Ch. 42, L. 1997; amd. Sec. 18, Ch. 370, L. 1997.

19-3-1105. Benefit upon second retirement. (1) Except as otherwise expressly provided by law, a member with at least 2 years of service credit accrued after reemployment must receive the benefit of provisions enacted after the member's initial retirement, but only with respect to the service credit earned after reemployment.

(2) Upon retirement subsequent to a cancellation of a disability benefit under 19-3-1104, a member must receive a recalculated benefit as provided in 19-3-904 or 19-3-906, as applicable. The recalculated benefit is based on service credit accumulated at the time of the member's previous retirement plus any service credit accumulated subsequent to reemployment.

History: En. 68-2204 by Sec. 41, Ch. 323, L. 1973; amd. Sec. 6, Ch. 190, L. 1974; R.C.M. 1947, 68-2204(part); amd. Sec. 87, Ch. 265, L. 1993; amd. Sec. 38, Ch. 99, L. 2001; amd. Sec. 9, Ch. 128, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 128 in (2) in first sentence near middle after “cancellation” inserted “of a disability benefit” and at end inserted “or 19-3-906, as applicable”. Amendment effective October 1, 2007.

19-3-1106. Limited reemployment — reduction of service retirement benefit upon exceeding limits — exceptions. (1) A retired member under 65 years of age who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system for a period not to exceed 960 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit. The retirement benefit for any retiree exceeding this 960-hour limitation in any calendar year after retirement must be temporarily reduced \$1 for each \$1 earned after working 960 hours in that calendar year.

(2) A retiree 65 years of age or older who returns to employment covered by the retirement system is either subject to the 960-hour limitation of subsection (1) or may earn in any calendar year an amount that, when added to the retiree's current annual retirement benefits, will not exceed the member's annualized highest average compensation, adjusted for inflation as of January 1 of the current calendar year, whichever limitation provides the higher limit on earned compensation to the retiree. Upon reaching the applicable limitation, the retiree's benefits must be temporarily reduced \$1 for each \$1 of compensation earned in service beyond the applicable limitation during that calendar year.

(3) A retiree returning to employment covered by the retirement system and the returning employee's employer shall certify to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any month after retirement.

(4) A retiree returning to employment covered by the retirement system may elect to return to active membership at any time during this period of covered employment.

(5) The following members who return to employment covered by the retirement system are not subject to the hour or earnings limitations in subsections (1) and (2) or the reporting requirements in subsection (3):

(a) a retired member who is 70 ½ years of age or older; or

(b) an elected official in a covered position who declines optional membership as provided in 19-3-412.

(6) For the purposes of this section, “employment covered by the retirement system” includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor as those terms are defined in 39-8-102.

History: En. 68-2204 by Sec. 41, Ch. 323, L. 1973; amd. Sec. 6, Ch. 190, L. 1974; R.C.M. 1947, 68-2204(2); amd. Sec. 9, Ch. 496, L. 1981; amd. Sec. 2, Ch. 303, L. 1985; amd. Sec. 2, Ch. 275, L. 1991; amd. Sec. 88, Ch. 265, L. 1993; amd. Sec. 1, Ch. 460, L. 1995; amd. Sec. 35, Ch. 562, L. 1999; amd. Sec. 3, Ch. 66, L. 2001; amd. Sec. 39, Ch. 99, L. 2001; amd. Sec. 2, Ch. 402, L. 2003; amd. Sec. 37, Ch. 429, L. 2003; amd. Sec. 10, Ch. 128, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 128 inserted (6) defining employment covered by the retirement system. Amendment effective October 1, 2007.

19-3-1112. Nonapplication of part to defined contribution plan. Except as otherwise provided in chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

History: En. Sec. 40, Ch. 471, L. 1999.

Part 12

Survivorship Benefits and Death Payments

19-3-1201. Eligibility for death payments. Upon receipt of a written application filed with the board by a designated beneficiary, the board shall grant a death payment to the designated beneficiary of any member who dies:

(1) while in service;

(2) within 6 months after the discontinuance of service but before retirement;

(3) while a recipient of a disability retirement benefit, if the benefit has been in effect less than 6 months;

(4) while disabled, if the member has been continuously disabled since discontinuance of the member's service but is not receiving a disability retirement benefit; or

(5) while an inactive member.

History: En. 68-2301 by Sec. 42, Ch. 323, L. 1973; R.C.M. 1947, 68-2301; amd. Sec. 4, Ch. 196, L. 1989; amd. Sec. 78, Ch. 265, L. 1993; amd. Sec. 38, Ch. 429, L. 2003.

19-3-1202. Amount of death payment. (1) The amount of death payment to be made to the designated beneficiary of a deceased member is the sum of subsections (1)(a), (1)(b), and (1)(c) as follows:

- (a) the member's accumulated contributions;
- (b) subject to subsection (2), an amount equal to one-twelfth of the compensation received by the member during the last 12 months of compensation multiplied by the smaller of six or the number of years of the member's service credit; and
- (c) the accumulated regular interest on the amounts in subsections (1)(a) and (1)(b) to the first day of the month in which the payment is made.

(2) A beneficiary of an inactive member is not eligible to receive the payment described in subsection (1)(b).

History: En. 68-2302 by Sec. 43, Ch. 323, L. 1973; R.C.M. 1947, 68-2302; amd. Sec. 1, Ch. 210, L. 1981; amd. Sec. 57, Ch. 613, L. 1989; amd. Sec. 79, Ch. 265, L. 1993; amd. Sec. 39, Ch. 429, L. 2003; amd. Sec. 11, Ch. 128, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 128 in (1) near beginning after "amount of" inserted "death" and near middle substituted "the designated beneficiary of a deceased member" for "those eligible for death payments"; and in (1)(b) at beginning inserted "subject to subsection (2)". Amendment effective October 1, 2007.

19-3-1203. Election of optional death annuity. The designated beneficiary of a deceased member may elect, by filing a written application with the board, to have the death payment provided for in 19-3-1201 paid in an actuarially equivalent form, subject to rules that the board may adopt. The annuity payments are not subject to increases that may be granted to other monthly retirement benefits.

History: En. 68-2303 by Sec. 44, Ch. 323, L. 1973; R.C.M. 1947, 68-2303; amd. Sec. 80, Ch. 265, L. 1993; amd. Sec. 40, Ch. 99, L. 2001; amd. Sec. 12, Ch. 128, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 128 in first sentence near beginning after "of a" inserted "deceased" and near middle substituted "death payment provided for in 19-3-1201" for "lump-sum death payment". Amendment effective October 1, 2007.

19-3-1204. Survivorship benefit elected by beneficiary. (1) A designated beneficiary eligible to receive a death payment may instead elect a survivorship benefit by filing a written application with the board, if all of the following conditions are met:

(a) the deceased member on behalf of whom the death benefit is payable had completed 5 years of membership service;

(b) the designated beneficiary is a natural person; and

(c) the designated beneficiary elects the survivorship benefit within 90 days of receipt of notice from the board that the designated beneficiary is eligible to receive the death payment.

(2) A designated beneficiary of a vested member may, by filing a written application with the board, elect to receive a survivorship benefit in lieu of a death payment.

(3) (a) If the designated beneficiary is a minor, the custodian designated in 19-2-803 may, on the minor's behalf, file a written application with the board.

(b) If an application is not filed on the minor's behalf and no payment has been made, the designated beneficiary may file a written application upon reaching the age of majority. For the purposes of this subsection (3)(b), the survivorship benefit provided for in 19-3-1205 must be calculated as if the member had died on the last day of the month before the month in which the application was filed.

History: En. 68-2304 by Sec. 45, Ch. 323, L. 1973; amd. Sec. 7, Ch. 190, L. 1974; amd. Sec. 3, Ch. 89, L. 1977; amd. Sec. 10, Ch. 99, L. 1977; amd. Sec. 7, Ch. 241, L. 1977; R.C.M. 1947, 68-2304; amd. Sec. 2, Ch. 153, L. 1985; amd. Sec. 5, Ch. 196, L. 1989; amd. Sec. 81, Ch. 265, L. 1993; amd. Sec. 36, Ch. 562, L. 1999; amd. Sec. 41, Ch. 99, L. 2001; amd. Sec. 25, Ch. 329, L. 2005; amd. Sec. 13, Ch. 128, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 128 in (1) near middle, (1)(c) near end, and (2) near end before "death payment" deleted "lump-sum"; in (1)(a) at beginning before "member" inserted "deceased"; and made minor changes in style. Amendment effective October 1, 2007.

19-3-1205. Amount of survivorship benefit. The survivorship benefit payable to a member's designated beneficiary is the actuarial equivalent of:

(1) the accrued portion of the early retirement benefit pursuant to 19-3-906 that would have been payable to the member commencing at age 50 if the member had not attained age 50 or earned 25 years of membership service at the time of death;

(2) if the deceased member had attained age 50 or earned 25 years of membership service at the time of death, the early retirement benefit that would have been payable to the member if the member had retired immediately prior to death; or

(3) if the deceased member had attained age 60 or earned 30 years of membership service at the time of death, the service retirement benefit that would have been payable to the member if the member had retired immediately prior to death.

History: En. 68-2305 by Sec. 46, Ch. 323, L. 1973; amd. Sec. 8, Ch. 190, L. 1974; R.C.M. 1947, 68-2305; amd. Sec. 82, Ch. 265, L. 1993; amd. Sec. 13, Ch. 412, L. 1995; amd. Sec. 105, Ch. 42, L. 1997; amd. Sec. 40, Ch. 429, L. 2003.

19-3-1206 through 19-3-1209 reserved.

19-3-1210. Death payments to designated beneficiaries of retired members. If a retired member dies without designating a contingent annuitant under 19-3-1501, the member's designated beneficiary or estate must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

History: En. Sec. 83, Ch. 265, L. 1993; amd. Sec. 37, Ch. 562, L. 1999; amd. Sec. 41, Ch. 429, L. 2003.

19-3-1211. Refund when former member dies after transferring to another system. The accumulated contributions of a member who dies after becoming a member of any other system described in 19-3-403(4) and before receiving the member's accumulated contributions must be paid to the designated beneficiary.

History: En. Sec. 68-1602 by Sec. 6, Ch. 323, L. 1973; amd. Sec. 1, Ch. 374, L. 1974; amd. Sec. 1, Ch. 16, L. 1975; amd. Sec. 1, Ch. 128, L. 1975; amd. Sec. 1, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1602(8)(b); amd. Sec. 84, Ch. 265, L. 1993; Sec. 19-3-404, MCA 1991; redes. 19-3-1211 by Code Commissioner, 1993.

19-3-1212. Nonapplication of part to defined contribution plan. Except as otherwise provided in chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

History: En. Sec. 40, Ch. 471, L. 1999.

Part 15 Optional Forms of Benefit Payments

19-3-1501. Optional forms of benefits — designation of contingent annuitant. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. An optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit, depending on the option selected, to a contingent annuitant as follows:

(a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:

(i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:

(A) a 10-year period certain if the member retired at 75 years of age or younger; or

(B) a 20-year period certain if the member retired at 65 years of age or younger;

(ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis.

(2) The member or the designated beneficiary who elects an optional retirement benefit shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If a member dies after retirement and within 30 days from the date that the member's written application electing or changing an election of an optional retirement benefit is received by the board, then the election is void.

(5) (a) Upon filing a written application with the board, a retired member who is receiving an optional retirement benefit that became effective before October 1, 1999, may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has no right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change.

(6) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is initially effective on or after October 1, 1999, may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement, designate a different contingent annuitant, or select a different option if:

(i) the contingent annuitant has died, in which case the optional benefit may revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary has no right to receive the optional retirement benefit as part of a family law order, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (6) must be increased by the amount of any postretirement adjustments received by the member since the effective date of the member's retirement.

(7) A written application pursuant to subsection (5) or (6) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.

History: En. 68-2203 by Sec. 40, Ch. 323, L. 1973; amd. Sec. 5, Ch. 190, L. 1974; amd. Sec. 9, Ch. 99, L. 1977; amd. Sec. 6, Ch. 241, L. 1977; amd. Sec. 15, Ch. 332, L. 1977; R.C.M. 1947, 68-2203; amd. Sec. 1, Ch. 527, L. 1985; amd. Sec. 85, Ch. 265, L. 1993; Sec. 19-3-1101, MCA 1991; redes. 19-3-1501 by Code Commissioner, 1993; amd. Sec. 1, Ch. 217, L. 1999; amd. Sec. 38, Ch. 562, L. 1999; amd. Sec. 42, Ch. 99, L. 2001; amd. Sec. 42, Ch. 429, L. 2003; amd. Sec. 26, Ch. 329, L. 2005.

19-3-1502. Nonapplication of part to defined contribution plan. Except as otherwise provided in chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

History: En. Sec. 40, Ch. 471, L. 1999.

Part 16

Postretirement Benefits and Benefit Increases

19-3-1605. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by the applicable percentage provided in subsection (4).

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than an annualized increase of the applicable percentage provided in subsection (4), then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of the applicable percentage in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than an annualized increase of the applicable percentage provided in subsection (4), then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to the applicable percentage provided in subsection (5) more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made.

(4) (a) The applicable percentage is 3% for benefit recipients hired or assuming office:

(i) before July 1, 2007; or

(ii) on or after July 1, 2007, if the benefit recipient is an existing member of a benefit plan for which the applicable percentage is 3%.

(b) Except as provided in subsection (4)(a)(ii), the applicable percentage is 1.5% for benefit recipients hired or assuming office on or after July 1, 2007.

(5) (a) The applicable percentage rate for a contingent annuitant described in subsection (2)(c) is 3% if the original payee:

(i) was hired or assumed office before July 1, 2007; or

(ii) was an existing member of a benefit plan for which the applicable percentage is 3%.

(b) Except as provided in subsection (5)(a)(ii), the applicable percentage rate for a contingent annuitant described in subsection (2)(c) is 1.5% if the original payee was hired or assumed office on or after July 1, 2007.

(6) The board shall adopt rules to administer the provisions of this section.

History: En. Sec. 1, Ch. 287, L. 1997; amd. Sec. 39, Ch. 562, L. 1999; amd. Sec. 1, Ch. 62, L. 2001; amd. Sec. 3, Ch. 149, L. 2001; amd. Sec. 1, Ch. 309, L. 2001; amd. Sec. 3, Ch. 371, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 371 in (1) at end, in (2)(a) near middle and near end, in (3)(b) near end, and in (3)(c) near middle substituted reference to applicable percentage rate for "3%"; inserted (4) specifying percentage rate for current and future benefit recipients; inserted (5) specifying applicable percentage rate for contingent annuitant; and made minor changes in style. Amendment effective July 1, 2007.

19-3-1606. Purchasing power adjustment. Beginning with the July 2001 benefit, the board shall provide an ad hoc benefit increase to retired members and beneficiaries of the retirement system receiving a monthly retirement benefit. The ad hoc benefit increase must be calculated by the board actuary and approved by the board. The benefit increase must be designed to bring the benefit recipient's current benefit up to a level estimated to be no less than 75% of the purchasing power of the original recipient's initial monthly benefit. Purchasing power must be calculated considering the date that the first benefit was paid to the original benefit recipient, applicable benefit increases since that date, and a comparison with the consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor since the date the first benefit was paid to the original benefit recipient.

History: En. Sec. 4, Ch. 149, L. 2001.

19-3-1607. Nonapplication of part to defined contribution plan. Unless otherwise explicitly provided in this part, none of the provisions of this part apply under the defined contribution plan.

History: En. Sec. 13, Ch. 490, L. 2001.

Part 21 Defined Contribution Plan

19-3-2101. Definitions. Unless the context requires otherwise, as used in this part, the following definitions apply:

(1) "Member" means a person with a retirement account in the defined contribution plan.

(2) "Optional retirement program" means the retirement plan established by the board of regents under chapter 21 of this title.

(3) "Plan" or "defined contribution plan" means the defined contribution retirement plan.

History: En. Sec. 42, Ch. 471, L. 1999; amd. Sec. 14, Ch. 490, L. 2001.

19-3-2102. Defined contribution plan established — assets to be held in trust — contracted services. (1) The board shall establish within the public employees' retirement system a defined contribution plan in accordance with the provisions of this part. The plan must be established as a pension plan for the exclusive benefit of members and their beneficiaries and as a "qualified governmental plan" pursuant to section 401(a) of the Internal Revenue Code and its implementing regulations. Retirement accounts must be established for each member of the defined contribution plan. Assets of the plan must be held in trust. The plan is established in addition to any retirement, pension, deferred compensation, or other benefit plan administered by the state or a political subdivision.

(2) The board may contract for plan administration and use a competitive bidding process when contracting for consulting, educational, investment, recordkeeping, or other services for the plan.

History: En. Sec. 43, Ch. 471, L. 1999; amd. Sec. 15, Ch. 490, L. 2001.

19-3-2103. Legislative intent. It is the intent of the legislature that, in implementing and administering the defined contribution plan:

(1) changes to current administrative processes and the impact of those changes on employers be minimized to the extent possible;

(2) the administrative structure for the plan be configured in an economical and efficient manner;

(3) administration and services for the plan be contracted out to the extent possible, but that the board provide for the diligent oversight of the contracts;

(4) reasonable member services be provided for and that fees be commensurate with the services;

(5) lines of communication and responsibilities be clearly established so that employers or their personnel and payroll officers do not advise members about plan choices or investment alternatives; and

(6) employers be encouraged to provide paid time for members to attend educational programs sponsored by the board pursuant to 19-3-112.

History: En. Sec. 44, Ch. 471, L. 1999; amd. Sec. 43, Ch. 429, L. 2003.

19-3-2104. Board powers and duties — rulemaking. (1) The board has the powers and shall perform the duties regarding the defined contribution plan as provided in 19-2-403, as applicable. The board may also exercise the powers and shall perform the duties provided in this chapter.

(2) The board shall, in accordance with the Montana Administrative Procedure Act, adopt rules necessary for the implementation of this part and other applicable sections in chapters 2 and 3 of this title.

History: En. Sec. 45, Ch. 471, L. 1999; amd. Sec. 27, Ch. 329, L. 2005.

19-3-2105. Administrative expenses and fees. (1) The board may establish a fund within the defined contribution plan for paying the plan's administrative expenses.

(2) The board may:

(a) assess fees to pay the reasonable administrative costs of the plan; and

(b) negotiate with a vendor or vendors for vendor reimbursement of board administrative expenses for the plan.

(3) All fees assessed must be fully disclosed to plan members and treated as public information.

(4) Costs for the board to provide for contract oversight are included as part of the administrative expenses of the plan.

History: En. Sec. 46, Ch. 471, L. 1999.

19-3-2106. Limited contract right. The statutory provisions governing the defined contribution plan and the optional retirement program are subject to amendment by the legislature. Employees choosing the defined contribution plan or the optional retirement

program pursuant to this part do not have a contract right to the specific terms and conditions specified in statute on the date the employee's choice becomes effective.

History: En. Sec. 16, Ch. 490, L. 2001.

19-3-2107 through 19-3-2110 reserved.

19-3-2111. Plan membership — written election required — failure to elect — effect of election. (1) Except as otherwise provided in this part:

(a) (i) a member who is an active member of the defined benefit plan on the date that the defined contribution plan becomes effective may, within 12 months after that date, elect to transfer to and become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period;

(ii) a member who was an inactive member of the defined benefit plan on the date that the defined contribution plan becomes effective and who is rehired into covered employment after the plan effective date may, within the 12-month period provided for in subsection (2)(a), elect to transfer to and become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period;

(b) a member who is initially hired into covered employment on or after the date that the defined contribution plan becomes effective may, within the 12-month period provided for in subsection (2)(a), elect to become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(2) (a) Elections made pursuant to this section must be made on a form prescribed by the board and must be made within 12 months from the month that the employer properly reports the new or rehired member to the board.

(b) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(c) An election under this section, including the default election pursuant to subsection (2)(b), is a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(c) does not prohibit a new election after a member has terminated membership in either plan and returned to covered employment.

(3) A member in either the defined benefit plan or the defined contribution plan who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(4) A system member may not simultaneously be a member of the defined benefit plan and the defined contribution plan and must be a member of either the defined benefit plan or the defined contribution plan. A period of service may not be credited in more than one retirement plan within the system.

(5) The provisions of this part do not prohibit the board from adopting rules to allow an employee to elect the defined contribution plan from the first day of covered employment.

(6) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the defined contribution plan unless the order is modified to apply under the defined contribution plan.

(7) (a) A member of the defined benefit plan who is purchasing service credit through installment payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer membership to the defined contribution plan unless the member first completes or terminates the contract for purchase of service credit.

(b) A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must be made with after-tax dollars.

(c) If a member who files an election to transfer membership fails to complete or terminate the contract for purchase of service credit by the end of the member's 12-month election window, the board shall terminate the service purchase contract and credit the member with the prorated amount of service credit purchased under the contract.

History: En. Sec. 47, Ch. 471, L. 1999; amd. Sec. 17, Ch. 490, L. 2001; amd. Sec. 44, Ch. 429, L. 2003; amd. Sec. 28, Ch. 329, L. 2005; amd. Sec. 14, Ch. 128, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 128 in (1)(a)(ii) near middle after "within" substituted "the 12-month period provided for in subsection (2)(a)" for "12 months after the member's rehire date"; in (1)(b) near middle after "within" substituted "the 12-month period provided for in subsection (2)(a)" for "12 months of the member's hire date"; and in (2)(a) at end inserted "and must be made within 12 months from the month that the employer properly reports the new or rehired member to the board". Amendment effective October 1, 2007.

19-3-2112. Plan choices for members employed by university system — amount available to transfer — effect on rights. (1) If a member who is employed by the Montana university system is eligible to make an election under this part to transfer to the defined contribution plan, the employee may, instead of electing the defined contribution plan, elect to transfer membership to the university system's optional retirement program provided for under chapter 21 of this title.

(2) Except as otherwise provided in this part, an election to transfer membership to the optional retirement program must be made in accordance with the following provisions:

(a) (i) A member employed by the university system who is an active member of the defined benefit plan on the effective date of the defined contribution plan may, within the 12-month period provided for in subsection (2)(b), elect to transfer to and become a member of the optional retirement program regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(ii) A member who was an inactive member of the defined benefit plan on the effective date of the defined contribution plan and who is hired or rehired into covered employment with the university system after that date may, within the 12-month period provided for in subsection (2)(b), elect to transfer to and become a member of the optional retirement program regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(iii) A member who is initially hired into covered employment with the university system on or after the effective date of the defined contribution plan may, within the 12-month period provided for in subsection (2)(b), elect to become a member of the optional retirement program regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(b) Elections made pursuant to this section must be made on a form prescribed by the board and must be made within 12 months from the month that the employer properly reports the new or rehired member to the board.

(c) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(d) An election under this section, including the default election pursuant to subsection (2)(c), is a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(d) does not prohibit a new election after an employee has terminated membership in the optional retirement program and returned to employment in a position covered under the system.

(e) A member in either the defined benefit plan or the optional retirement program who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(f) Except as provided in subsection (2)(g), a university employee in a position covered under the system may not simultaneously be a member of more than one retirement plan under chapters 3 and 21 of this title, but must be a member of the defined benefit plan, the defined contribution plan, or the optional retirement program as provided by applicable provisions of this title. The same period of service may not be credited in more than one retirement system or plan.

(g) A university system employee who is or has been a member of the optional retirement program and returns to or accepts covered employment other than with the university system may make an election pursuant to 19-3-2111. That election is valid only for covered employment other than with the university system.

(h) The provisions of this part do not prohibit the board from adopting rules to allow an eligible employee to elect the optional retirement program from the first day of covered employment.

(i) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the optional retirement program unless the order is modified to apply under the optional retirement program.

(j) (i) A member of the defined benefit plan who is purchasing service credit through installment payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer membership to the optional retirement program unless the member completes or terminates the contract for purchase of service credit.

(ii) A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must be made with after-tax dollars.

(iii) If a member who files an election to transfer fails to complete or terminate the contract for purchase of service credit by the end of the member's 12-month election window, the board shall terminate the service purchase contract and credit the member with the prorated amount of service credit purchased under the contract.

(3) For an employee electing to transfer membership to the optional retirement program, the board shall transfer to the optional retirement program the amount that the employee would have been able to transfer to the defined contribution plan under 19-3-2114.

(4) An election to become a member of the optional retirement program pursuant to this section is a waiver of all rights and benefits under the public employees' retirement system.

History: En. Sec. 48, Ch. 471, L. 1999; amd. Sec. 18, Ch. 490, L. 2001; amd. Sec. 45, Ch. 429, L. 2003; amd. Sec. 29, Ch. 329, L. 2005; amd. Sec. 15, Ch. 128, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 128 in (2)(a)(i) near middle after "within" substituted "the 12-month period provided for in subsection (2)(b)" for "12 months after that date"; in (2)(a)(ii) near middle after "within" substituted "the 12-month period provided for in subsection (2)(b)" for "12 months after the member's hire or rehire date"; in (2)(a)(iii) near middle after "within" substituted "the 12-month period provided for in subsection (2)(b)" for "12 months of the member's hire date"; and in (2)(b) at end inserted "and must be made within 12 months from the month that the employer properly reports the new or rehired member to the board". Amendment effective October 1, 2007.

19-3-2113. Reinstatement of plan membership — purchase of prior service credit in defined benefit plan. (1) (a) A member who terminates membership in the defined benefit plan, the defined contribution plan, or the optional retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment in less than 24 months is a member of the plan that the member last selected and is not eligible for a new plan choice election.

(b) A member who terminated membership in the defined benefit plan, the defined contribution plan, or the optional retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment after 24 months or more is eligible to make a plan choice election as though initially hired as provided for in 19-3-2111(1)(b).

(2) (a) An employee who returns to covered employment after terminating membership in the defined benefit plan, who is eligible to make a plan choice, and who elects to join the defined benefit plan pursuant to 19-3-2111 or 19-3-2112 may reinstate prior membership service and service credit as provided in 19-2-603.

(b) An employee who returns to covered employment after terminating membership in the defined contribution plan or the optional retirement program, who is eligible to make a plan choice, and who elects to join the defined benefit plan pursuant to 19-3-2111 or 19-3-2112 may purchase prior membership service and service credit by paying to the board the full actuarial cost of the service credit as of the latest actuarial valuation of the defined benefit plan. The member may not purchase membership service and service credit under this section in excess of the member's length of service in the defined contribution plan or the optional retirement program.

History: En. Sec. 49, Ch. 471, L. 1999; amd. Sec. 19, Ch. 490, L. 2001; amd. Sec. 46, Ch. 429, L. 2003; amd. Sec. 16, Ch. 128, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 128 in (2)(a) near end and in (2)(b) near middle of first sentence after "plan" inserted "pursuant to 19-3-2111 or 19-3-2112"; and made minor changes in style. Amendment effective October 1, 2007.

19-3-2114. Amount available to transfer. (1) (a) For an employee who was an active member of the system on the day before the effective date of the defined contribution plan and who elects to transfer to the plan:

(i) for amounts contributed prior to July 1, 2002, the board shall transfer from the defined benefit plan to the member's retirement account the employee's contributions and the percentage of the employer's contributions specified in subsection (1)(b), plus 8% compounded annual interest on the total of the transferred employee and employer contributions from the month that the contributions were received; and

(ii) for amounts contributed on or after July 1, 2002, the board shall transfer from the defined benefit plan to the member's retirement account an amount equal to the amount that would have been allocated to the member's account pursuant to 19-3-2117, plus 8% compounded annual interest from the month that the contributions were received.

(b) Based on the contribution amount historically available to pay unfunded liabilities in the defined benefit plan and the transferring member's years of membership service, the percentage of the employer contributions that may be transferred are as follows:

Years of membership service	Percentage of employer contributions available to transfer
Less than 5 years	65.53%
5 to 9 years	58.59%
10 to 14 years	55.26%
15 to 19 years	55.42%
20 or more years	57.53%

(2) For an employee hired on or after the effective date of the defined contribution plan who elects to become a member of the plan, the board shall transfer from the defined benefit plan to the member's retirement account an amount equal to the amount that would have been allocated to the member's account pursuant to 19-3-2117 had the employee become a plan member on the employee's hire date, plus 8% compounded annual interest from the month that the contributions were received.

(3) For an employee who was an inactive member of the defined benefit plan on the date that the defined contribution plan became effective and who after that date became an active member and elected to transfer to the defined contribution plan:

(a) for amounts contributed prior to July 1, 2002, the board shall transfer from the defined benefit plan to the member's retirement account the employee's contributions and the percentage of the employer's contributions specified in subsection (1)(b), plus 8% compounded annual interest on the total of the transferred employee and employer contributions from the month that the contributions were received; and

(b) for amounts contributed on or after July 1, 2002, the board shall transfer from the defined benefit plan to the member's retirement account an amount equal to the amount that would have been allocated to the member's account pursuant to 19-3-2117, plus 8% compounded annual interest from the month that the contributions were received.

History: En. Sec. 50, Ch. 471, L. 1999; amd. Sec. 20, Ch. 490, L. 2001; amd. Sec. 47, Ch. 429, L. 2003; amd. Sec. 30, Ch. 329, L. 2005.

19-3-2115. Transfers or rollovers into plan — service transfers — membership credit for purposes of vesting. (1) (a) Except as provided in subsection (2), the board shall accept the rollover of contributions and the income on those contributions from another eligible retirement plan to the member's vested account as allowed under applicable federal law.

(b) To transfer service credit from another retirement system in this title, an employee must be a member of the defined benefit plan. The member must receive membership service and service credit for the service the member transfers. The transferring member may, within 12 months after joining the defined benefit plan, elect to become a member of the defined contribution plan. The transferred service credit may be used for purposes of vesting in the defined contribution plan pursuant to 19-3-2116.

(2) The board shall accept a direct rollover of eligible distributions from another eligible retirement plan only to the extent permitted by the Internal Revenue Code.

History: En. Sec. 51, Ch. 471, L. 1999; amd. Sec. 21, Ch. 490, L. 2001; amd. Sec. 48, Ch. 429, L. 2003.

19-3-2116. Vesting — mandatory termination of membership — forfeitures. (1) A member's contribution account includes the member's contributions and the income on those contributions and is vested from the date that the employee becomes a member of the plan.

(2) A member's employer contribution account includes the employer's contributions and the income on those contributions and is vested only when the member has a total of 5 years of membership service under the system.

(3) A member's account for other contributions includes the member's rollovers of contributions made pursuant to 19-3-2115 and income on those contributions and is vested from the date that the contribution is credited to the account.

(4) A member who terminates service after becoming a vested member may terminate plan membership as provided in 19-3-2123.

(5) A member who terminates service before becoming a vested member shall terminate plan membership as provided in 19-3-2123 and subject to 19-3-2126.

(6) If the member's employer contribution account is not vested upon termination of plan membership, as provided in 19-3-2123, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117.

History: En. Sec. 52, Ch. 471, L. 1999; amd. Sec. 22, Ch. 490, L. 2001; amd. Sec. 49, Ch. 429, L. 2003; amd. Sec. 31, Ch. 329, L. 2005.

19-3-2117. Allocation of contributions and forfeitures. (1) The member contributions made under 19-3-315 and additional contributions paid by the member for the purchase of service must be allocated to the plan member's retirement account.

(2) Subject to adjustment by the board as provided in 19-3-2121, of the employer contributions under 19-3-316 received:

(a) an amount equal to:

(i) 4.19% of compensation must be allocated to the member's retirement account;

(ii) 2.37% of compensation must be allocated to the defined benefit plan as the plan choice rate;

(iii) 0.04% of compensation must be allocated to the education fund as provided in 19-3-112(1)(b); and

(iv) 0.3% of compensation must be allocated to the long-term disability plan trust fund established pursuant to 19-3-2141; and

(b) on July 1, 2007, through June 30, 2009, 0.135% of compensation and on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-316, 0.27% of compensation must be allocated in the following order:

(i) to the administrative account used by the board to meet the expenses of the plan's startup loan, until paid in full;

(ii) to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability; and

(iii) to the long-term disability plan trust fund to provide disability benefits to eligible members.

(3) Forfeitures of employer contributions and investment income on the employer contributions may not be used to increase a member's retirement account. The board shall allocate the forfeitures under 19-3-2116 to meet the plan's administrative expenses, including startup expenses.

History: En. Sec. 53, Ch. 471, L. 1999; amd. Secs. 5, 14(2)(a), Ch. 423, L. 2001; amd. Sec. 23, Ch. 490, L. 2001; amd. Sec. 51, Ch. 114, L. 2003; amd. Sec. 50, Ch. 429, L. 2003; amd. Sec. 32, Ch. 329, L. 2005; amd. Sec. 4, Ch. 371, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 371 in (2)(a) at beginning deleted "on or after July 1, 2002"; inserted (2)(b) requiring certain percentages of compensation to be allocated to specified accounts, plans, or funds at specified times; and made minor changes in style. Amendment effective July 1, 2007.

19-3-2118 through 19-3-2120 reserved.

19-3-2121. Determination and adjustment of plan choice rate and contribution allocations. (1) The board shall periodically review the sufficiency of the plan choice rate and shall adjust the allocation of contributions under 19-3-2117 as specified in this section. The board shall collect and maintain the data necessary to comply with this section.

(2) The plan choice rate set in 19-3-2117(2)(b) must be adjusted as provided in this section, taking into account:

(a) as determined under subsection (3), the change in the normal cost contribution rate in the defined benefit plan that is the result of member selection of the defined contribution plan; and

(b) as determined under subsection (4), the sufficiency of the plan choice rate to actuarially fund the defined contribution plan member's appropriate share of the defined benefit plan's unfunded liabilities.

(3) The change in the normal cost contribution rate must be an amount equal to the difference between the normal cost contribution rate in the defined benefit plan that would have resulted if all system members remained in the defined benefit plan and the normal cost contribution rate in the defined benefit plan for the actual members of the defined benefit plan, multiplied by the compensation paid to all of the members in the defined benefit plan, divided by the compensation paid to all of the members in the defined contribution plan. The measurements under this subsection must be based on the defined benefit plan in effect on the effective date of the defined contribution plan until the board determines that the defined benefit plan has been amended in a manner that significantly affects plan choices available to system members. After a board determination that the defined benefit plan has been significantly changed, the measurements in this subsection with respect to members entering the system after the significant change must be made on the basis of the defined benefit plan, as amended.

(4) The sufficiency of the plan choice rate to actuarially fund the appropriate share of the defined benefit plan's unfunded liabilities must be determined as follows:

(a) The board shall determine the number of years required to actuarially fund the defined benefit plan's unfunded liabilities as of the June 30, 1998, actuarial valuation, which must be the initial schedule for the defined contribution plan to actuarially fund the plan's share of the unfunded liabilities. The board shall reduce the schedule by 1 year each biennium.

(b) During each subsequent actuarial valuation of the defined benefit plan conducted pursuant to 19-2-405, the board shall determine whether the plan choice rate minus the amount provided in subsection (2)(a) of this section is sufficient to pay the unfunded liability obligations within the schedule determined under subsection (4)(a) of this section. If the amount is insufficient to fund the liability over a period of 10 years longer than the scheduled period or is more than sufficient to fund the liability over a period of 10 years earlier than the scheduled period, the board shall determine to the nearest 0.1% the amount of the increase or decrease in the plan choice rate that is required to actuarially fund the liabilities according to the established schedule.

(5) If the board determines that the plan choice rate should be increased or decreased, the plan choice rate under 19-3-2117(2)(b) must be increased or decreased accordingly. If the plan choice rate is increased, the allocation of employer contributions to member accounts under 19-3-2117(2)(a) must be decreased by that amount. If the plan choice rate is decreased, the allocation of employer contributions to member accounts under 19-3-2117(2)(a) must be increased by that amount.

(6) If the board determines that the contribution rate to the disability plan under 19-3-2117(2)(d) should be increased, the employer contribution to each member's account under 19-3-2117(2)(a) must be decreased by that amount. If the board determines that the contribution rate to the disability plan under 19-3-2117(2)(d) should be decreased, the employer contribution to each member's account under 19-3-2117(2)(a) must be increased by that amount.

(7) By November 1 of the year of a determination pursuant to this section that the allocation of employer contributions under 19-3-2117(2) must be changed, the board shall notify system members, participating employers, employee and employer organizations, the governor, and the legislature of its determination and of the changes required.

(8) Effective January 1 of the year after the regular legislative session that immediately follows a determination under this section, the plan choice rate and the allocation of contributions under 19-3-2117(2) must be adjusted according to the board's determination.

History: En. Sec. 54, Ch. 471, L. 1999; amd. Sec. 6, Ch. 423, L. 2001; amd. Sec. 24, Ch. 490, L. 2001; amd. Sec. 33, Ch. 329, L. 2005.

19-3-2122. Investment alternatives — notice of changes — default fund. (1) The board shall provide for at least eight investment alternatives within the defined contribution plan. In providing for the plan's investment alternatives, only a vendor or vendors offering suitable and well-managed investments, licensed to conduct business in Montana, and regulated by the United States securities and exchange commission may be used, unless exempt from the commission's regulation.

(2) The investment alternatives must include at least three that offer plan members the following:

(a) the ability to materially affect the potential return on amounts in the member's retirement account and the degree of risk to which those amounts are subject;

(b) a range of investment alternatives that:

(i) provides sound and diversified funds;

(ii) offers, under each alternative, a materially different risk and return characteristic than found in the other alternatives;

(iii) allows the member or beneficiary to choose among them to achieve a portfolio with an aggregate risk and return characteristic to achieve a point within the risk and return range normally appropriate for the member or beneficiary based on age, income, and individual retirement goals; and

(iv) tends to minimize through diversification the overall risk of large losses.

(3) The investment alternatives may include the investment alternatives offered to members of the state deferred compensation plan pursuant to chapter 50 of this title.

(4) The board shall from time to time review the suitability and management of investment alternatives and may change the alternatives to be offered. The board shall notify affected members of potential changes before any changes become effective.

(5) Assets within each member's retirement account must be invested as directed by the member.

(6) The board shall provide for a balanced fund to be established as a default investment fund. In the case of a member failing to direct how the member's retirement account is to be invested, the member's entire account must be invested in the default fund.

(7) This section does not prohibit the board from contracting with the board of investments established in 2-15-1808 to provide one or more investment alternatives within the plan.

History: En. Sec. 55, Ch. 471, L. 1999; amd. Sec. 25, Ch. 490, L. 2001.

19-3-2123. Payout of vested account balances when terminating plan membership. Except as provided in 19-3-2142, any time after termination of service, a member or the member's beneficiary may terminate plan membership by filing a written application with the board and removing the member's vested account balance from the plan through any combination of the following payout options, each of which is subject to applicable regulations of the internal revenue service:

(1) a direct rollover to an eligible retirement plan or to an individual retirement account or annuity pursuant to section 401(a)(31) of the Internal Revenue Code;

(2) a regular rollover to an eligible retirement plan pursuant to section 402(c) of the Internal Revenue Code; or

(3) a lump-sum distribution of the member's vested account balance.

History: En. Sec. 56, Ch. 471, L. 1999; amd. Sec. 7, Ch. 423, L. 2001; amd. Sec. 26, Ch. 490, L. 2001.

19-3-2124. Distribution options for plan members — rulemaking — minimum distribution requirements — restrictions. (1) Subject to 19-3-2116, 19-3-2126, and 19-3-2142, a member may, after termination of service, leave the member's vested account balance in the plan, and the member is eligible for a distribution as provided in this section.

(2) After termination of service and upon filing a written application with the board, a member may, if provided for by the board, select a distribution option offered pursuant to a contract negotiated by the board with a plan vendor or vendors.

(3) A member who is less than 70 ½ years of age who returns to service may not continue to receive a distribution under this section while actively employed in a covered position.

(4) The board shall adopt rules to administer this section and to provide that distributions comply with the minimum distribution requirements established in the Internal Revenue Code and applicable under 19-2-1007.

History: En. Sec. 57, Ch. 471, L. 1999; amd. Sec. 8, Ch. 423, L. 2001; amd. Sec. 27, Ch. 490, L. 2001.

19-3-2125. Death benefits. A plan member's beneficiary must be determined as provided in chapter 2, part 8, of this title. Upon filing a written application with the board after the death of a plan member, the member's beneficiary is entitled to the member's vested account balance subject to this part.

History: En. Sec. 58, Ch. 471, L. 1999; amd. Sec. 28, Ch. 490, L. 2001.

19-3-2126. Refunds — minimum account balance — adjustment by rule. (1) Before termination of service, a member may not receive a refund of any portion of the member's vested account balance.

(2) Except as provided in 19-3-2142, a member who terminates service and whose vested account balance is less than \$200 must be paid the vested account balance in a lump sum. If the member's employer contribution account is not vested, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117. The payment must be made as soon as administratively feasible without a written application from the member.

(3) Except as provided in 19-3-2142, unless a written application is made pursuant to subsection (4)(a), a member who terminates service and whose vested account balance is between \$200 and \$5,000 must be paid the vested account balance in a lump sum. The payment must be made as soon as administratively feasible. If the member's employer contribution account is not vested, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117.

(4) (a) Except as provided in 19-3-2142, upon the written application of a member terminating service whose vested account balance is \$200 or more, the board shall make a direct rollover distribution pursuant to section 401(a)(31) of the Internal Revenue Code of the eligible portion of that balance. To receive the direct rollover distribution, the member is responsible for correctly designating, on forms provided by the board, an eligible retirement plan that allows the rollover under applicable federal law.

(b) The direct rollover distribution must be paid directly to the eligible retirement plan.

(5) A member who terminates service with an account balance greater than \$5,000, whether vested or not, may remain in the plan.

(6) The board may by rule adjust the minimum account balance provided in this section as necessary to maintain reasonable administrative costs and to account for inflation.

History: En. Sec. 59, Ch. 471, L. 1999; amd. Secs. 9, 14(2)(b), Ch. 423, L. 2001; amd. Sec. 29, Ch. 490, L. 2001; amd. Sec. 51, Ch. 429, L. 2003; amd. Sec. 34, Ch. 329, L. 2005.

19-3-2133. Employee investment advisory council. The board shall create an employee investment advisory council. The advisory council shall meet at least four times a year to:

(1) advise the board concerning the operation of the defined contribution plan, including the selection of the initial investment alternatives to be provided pursuant to 19-3-2122;

(2) advise the board about negotiating, contracting, or modifying services for the state deferred compensation plan provided for in chapter 50; and

(3) review existing deferred compensation plans and to advise the board on the administration of the program.

History: En. Sec. 62, Ch. 471, L. 1999; amd. Sec. 30, Ch. 490, L. 2001; amd. Sec. 52, Ch. 429, L. 2003.

19-3-2141. Long-term disability plan — benefit amount — eligibility — administration and rulemaking. (1) (a) Except as provided in subsection (1)(b), a disabled member eligible under the provisions of this section is entitled to a disability benefit equal to one fifty-sixth of the member's highest average compensation, as defined in 19-3-108, multiplied by the member's years of service credit, including any service credit purchased under 19-3-513.

(b) An eligible member with at least 25 years of membership service is entitled to a disability benefit equal to one-fiftieth of the member's highest average compensation, as defined in 19-3-108, multiplied by the member's years of service credit, including any service credit purchased under 19-3-513.

- (2) Payment of the disability benefit provided in this section is subject to the following:
 - (a) the member must be vested in the plan as provided in 19-3-2116;
 - (b) if the member's disability occurred when the member was 60 years of age or less, the benefit may be paid only until the member reaches 65 years of age;
 - (c) if the member's disability occurred after the member reached 60 years of age, the benefit may be paid for no more than 5 years; and
 - (d) the member shall satisfy the other applicable requirements of this section and the board's rules adopted to implement this section.
- (3) Application for a disability benefit must be made in accordance with 19-3-1005.
- (4) The board shall make determinations on disability claims and conduct medical reviews in a manner consistent with the provisions of 19-2-406 and 19-3-1015. A member may seek review of a board determination as provided in rules adopted by the board.
- (5) If a member receiving a disability benefit under this section dies, the disability benefit payments cease and the member's beneficiary is entitled to death benefits only as provided for in 19-3-2125.
- (6) The board shall establish a long-term disability plan trust fund from which disability benefit costs pursuant to this section must be paid. The trust fund must be entirely separate and distinct from the defined benefit plan trust fund.
- (7) The board shall perform the duties, exercise the powers, and adopt reasonable rules to implement the provisions of this section.

History: En. Sec. 1, Ch. 423, L. 2001; amd. Sec. 14(1), Ch. 423, L. 2001; amd. Sec. 53, Ch. 429, L. 2003.

19-3-2142. Disability benefit recipients to remain members — access to account prohibited. A plan member who is receiving a disability benefit pursuant to 19-3-2141 remains a member of the retirement plan irrespective of employment status and may not receive a distribution from the member's retirement account.

History: En. Sec. 2, Ch. 423, L. 2001.

19-3-2143. Implementation. (1) To implement the provisions of 19-3-2141, the board shall establish a self-insured long-term disability plan through which the disability benefits must be paid.

(2) If the disability plan cannot be implemented as described in subsection (1), the board shall implement the provisions of 19-3-2141 by contracting for long-term disability insurance that provides for the benefits described in 19-3-2141.

History: En. Sec. 10, Ch. 423, L. 2001.

CHAPTER 20 TEACHERS' RETIREMENT

Part 1 General Provisions

19-20-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member's individual account in the annuity savings account, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumption set by the retirement board.

(3) "Average final compensation" means the average of a member's earned compensation during the 3 consecutive years of full-time service or as provided under 19-20-805 that yield the highest average and on which contributions have been made as required by 19-20-602. If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least the 5 fiscal years preceding the member's retirement, the amounts may be included in the calculation of average final compensation. If amounts defined in subsection (6)(b) have been reported as earned compensation for less than 5 fiscal years or if the member

has been given the option to have amounts reported as earned compensation, any amounts reported in the 3-year period that constitute average final compensation must be included in average final compensation as provided under 19-20-716(1)(b).

(4) "Beneficiary" means one or more persons formally designated by a member, retiree, or benefit recipient to receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient.

(5) "Creditable service" is that service defined by 19-20-401.

(6) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive of maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted from the member's compensation.

(b) Earned compensation does not mean:

(i) direct employer premium payments on behalf of members for health or dependent care expense accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental, or any other insurance;

(ii) any direct employer payment or reimbursement for:

(A) professional membership dues;

(B) maintenance;

(C) housing;

(D) day care;

(E) automobile, travel, lodging, or entertaining expenses; or

(F) any similar payment for any form of maintenance, allowance, or expenses;

(iii) the imputed value of health, life, or disability insurance or any other fringe benefits; or

(iv) any noncash benefit provided by an employer to or on behalf of an employee.

(c) Unless included pursuant to 19-20-716, earned compensation does not include termination pay.

(d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.

(e) Earned compensation does not include:

(i) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f);

(ii) payment for sick, annual, or other types of leave that is allowed to a member and that is accrued in excess of that normally allowed; or

(iii) incentive or bonus payments paid to a member that are not part of a series of annual payments.

(7) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state that employs a person who is designated a member of the retirement system.

(8) "Full-time service" means service that is at least 180 days in a fiscal year or at least 140 hours a month during 9 months in a fiscal year.

(9) "Internal Revenue Code" has the meaning provided in 15-30-101.

(10) "Member" means a person who has an individual account in the annuity savings account. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

(11) "Normal retirement age" means an age no earlier than the age at which the member is eligible to retire:

(a) by virtue of age, length of service, or both;

(b) without disability; and

(c) with the right to receive immediate retirement benefits without an actuarial reduction in the benefits.

(12) "Part-time service" means service that is less than full-time. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

(13) "Prior service" means employment of the same nature as service but rendered before September 1, 1937.

(14) “Regular interest” means interest at a rate set by the retirement board in accordance with 19-20-501(2).

(15) “Retired member” means a person who has terminated employment that qualified the person for membership under 19-20-302 and who has received at least one monthly retirement benefit paid pursuant to this chapter.

(16) “Retirement allowance” means a monthly payment due to a person who has qualified for service or disability retirement or due to a beneficiary as provided in 19-20-1001.

(17) “Retirement board” or “board” means the retirement system’s governing board provided for in 2-15-1010.

(18) “Retirement system”, “system”, or “plan” means the teachers’ retirement system of the state of Montana provided for in 19-20-102.

(19) “Service” means the performance of instructional duties or related activities that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

(20) “Termination” or “terminate” means that the member has severed the employment relationship with the member’s employer and that all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member.

(21) (a) “Termination pay” means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating employment and on which employee and employer contributions have been paid as required by 19-20-716.

(b) Termination pay does not include:

(i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

(22) “Vested” means that a member has been credited with at least 5 full years of membership service upon which contributions have been made, as required by 19-20-602, 19-20-605, and 19-20-607, and who has a right to a future retirement benefit.

(23) “Written application” or “written election” means a written instrument, required by statute or the rules of the board, properly signed, and filed with the board, that contains all the required information, including documentation that the board considers necessary.

History: En. 75-6201 by Sec. 96, Ch. 5, L. 1971; amd. Sec. 21, Ch. 326, L. 1974; amd. Sec. 1, Ch. 26, L. 1975; amd. Sec. 1, Ch. 127, L. 1977; amd. Sec. 1, Ch. 331, L. 1977; R.C.M. 1947, 75-6201(part); amd. Sec. 1, Ch. 446, L. 1981; amd. Sec. 1, Ch. 453, L. 1983; amd. Sec. 1, Ch. 224, L. 1985; amd. Sec. 6, Ch. 464, L. 1985; amd. Sec. 2, Ch. 45, L. 1987; amd. Sec. 1, Ch. 56, L. 1989; amd. Sec. 1, Ch. 331, L. 1989; amd. Sec. 2, Ch. 13, L. 1991; Sec. 19-4-101, MCA 1991; redes. 19-20-101 by Code Commissioner, 1993; amd. Sec. 2, Ch. 111, L. 1995; amd. Sec. 5, Ch. 442, L. 1997; amd. Sec. 2, Ch. 111, L. 1999; amd. Sec. 2, Ch. 45, L. 2001; amd. Sec. 57, Ch. 114, L. 2003; amd. Sec. 1, Ch. 174, L. 2003; amd. Sec. 1, Ch. 90, L. 2007; amd. Sec. 3, Ch. 305, L. 2007.

Compiler’s Comments

2007 Amendments — Composite Section: Chapter 90 in definition of accumulated contributions in first sentence near end and in definition of member at end of first sentence substituted “savings account” for “savings fund”. Amendment effective March 30, 2007.

Chapter 305 in definition of full-time service after “that is” substituted “at least 180 days in a fiscal year or at least 140 hours a month during 9 months in a fiscal year” for “full-time and that extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, full-time service means service that is full-time and that totals at least 9 months in any year”; in definition of part-time service in first sentence at end deleted “or that totals less than 180 days in a normal academic year”; in definition of vested inserted reference to 19-20-607; and made minor changes in style. Amendment effective April 27, 2007.

19-20-102. Retirement system — policy. (1) The state teachers’ retirement system created under the provisions of Chapter 87, Laws of 1937, is the state teachers’ retirement system of the state of Montana, and the provisions of this chapter do not affect or impair the validity of any action taken by its governing board or the rights of any person arising under the provisions of Chapter 87, Laws of 1937, or any subsequent amendment to this chapter. The state teachers’ retirement system is known as “The Teachers’ Retirement System of the State of Montana” and in that name shall transact all business of the retirement system, hold its assets

in trust, and have the powers and privileges of a corporation that may be necessary to administer the provisions of this chapter.

(2) It is the policy of the state to:

(a) provide equitable retirement benefits to members of the teachers' retirement system based on each member's normal service retirement and salary;

(b) limit the effect on the retirement system of isolated salary increases received by a member, including but not limited to end-of-career promotions or one-time salary enhancements during the member's last years of employment; and

(c) limit the compensation that a retired member may earn after retirement while working in a position that would normally be covered under the teachers' retirement system to the amount determined under 19-20-731.

History: En. 75-6202 by Sec. 97, Ch. 5, L. 1971; amd. Sec. 22, Ch. 326, L. 1974; R.C.M. 1947, 75-6202; Sec. 19-4-102, MCA 1991; redes. 19-20-102 by Code Commissioner, 1993; amd. Sec. 4, Ch. 305, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 305 inserted (2) concerning policy of state; and made minor changes in style. Amendment effective April 27, 2007.

19-20-103. Implied consent of employee. A person who accepts employment for which membership is required is considered to have consented to membership and to the withholding of contributions from his compensation.

History: En. 75-6214 by Sec. 109, Ch. 5, L. 1971; amd. Sec. 10, Ch. 127, L. 1977; amd. Sec. 8, Ch. 331, L. 1977; R.C.M. 1947, 75-6214(part); Sec. 19-4-103, MCA 1991; redes. 19-20-103 by Code Commissioner, 1993.

19-20-104. Guarantee by state. Regular interest charges payable, the creation and maintenance of reserves in the pension accumulation account, and the maintenance of accumulated contributions in the annuity savings account, as provided for in this chapter, and the payment of all retirement allowances, refunds, and other benefits granted under the retirement system are obligations of the state of Montana.

History: En. 75-6216 by Sec. 111, Ch. 5, L. 1971; amd. Sec. 11, Ch. 127, L. 1977; amd. Sec. 9, Ch. 331, L. 1977; R.C.M. 1947, 75-6216; Sec. 19-4-104, MCA 1991; redes. 19-20-104 by Code Commissioner, 1993; amd. Sec. 6, Ch. 442, L. 1997; amd. Sec. 2, Ch. 90, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 90 in two places substituted "account" for "fund". Amendment effective March 30, 2007.

19-20-105. Penalty for fraud. A person who knowingly makes a false statement or who falsifies or permits to be falsified any record of the retirement system in an attempt to defraud the system is guilty of a misdemeanor and is punishable as provided by law.

History: En. 75-6217 by Sec. 112, Ch. 5, L. 1971; amd. Sec. 12, Ch. 127, L. 1977; R.C.M. 1947, 75-6217(1); Sec. 19-4-105, MCA 1991; redes. 19-20-105 by Code Commissioner, 1993.

19-20-106. Retaining qualified plan status — board rulemaking authority. (1) The board shall administer the plan in the manner required to satisfy the applicable qualification requirements for a qualified governmental plan, as specified in the Internal Revenue Code. If a provision in this chapter conflicts with a qualification requirement in section 401 of the Internal Revenue Code applicable to public retirement systems or with the plan's status as a qualified governmental plan under section 414(d) of the Internal Revenue Code and consequent federal administrative regulations, the provision is either ineffective or must be interpreted to conform to the federal qualification requirements and allow the plan to retain tax-deferred status. The board may adopt rules to implement this section.

(2) For the purpose of section 401(a) of the Internal Revenue Code, the plan document for the retirement plan is composed of the applicable provisions of the Montana constitution, this chapter, and applicable rules adopted by the board.

History: En. Sec. 3, Ch. 442, L. 1997; amd. Sec. 3, Ch. 111, L. 1999.

Part 2 Administration of System

19-20-201. Administration by retirement board. (1) The retirement board shall administer and operate the retirement system within the limitations prescribed by this chapter, and it is the duty of the retirement board to:

(a) establish rules necessary for the proper administration and operation of the retirement system;

(b) approve or disapprove all expenditures necessary for the proper operation of the retirement system;

(c) keep a record of all its proceedings, which must be open to public inspection;

(d) submit a report to the office of budget and program planning detailing the fiscal transactions for the 2 fiscal years immediately preceding the report due date, the amount of the accumulated cash and securities of the retirement system, and the last fiscal year balance sheet showing the assets and liabilities of the retirement system;

(e) keep in convenient form the data that is necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the retirement system;

(f) prepare an annual valuation of the assets and liabilities of the retirement system that includes an analysis of how market performance is affecting the actuarial funding of the retirement system;

(g) prescribe a form for membership application that will provide adequate and necessary information for the proper operation of the retirement system;

(h) annually determine the rate of regular interest as prescribed in 19-20-501;

(i) establish and maintain the funds of the retirement system in accordance with the provisions of part 6 of this chapter; and

(j) perform other duties and functions as are required to properly administer and operate the retirement system.

(2) In discharging its duties, the board, or an authorized representative of the board, may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104.

(3) The board may send retirement-related material to employers and the campuses of the Montana university system for delivery to employees. To facilitate distribution, employers and those campuses shall each provide the board with a point of contact who is responsible for distribution of the material provided by the board.

(4) The board shall make available to the legislature pursuant to 5-11-210 copies of the annual actuarial valuation and report required pursuant to subsections (1)(d) and (1)(f).

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(1), (5) thru (7), (9), (11), (13), (16) thru (18); amd. Sec. 25, Ch. 112, L. 1991; amd. Sec. 25, Ch. 349, L. 1993; Sec. 19-4-201, MCA 1991; redes. 19-20-201 by Code Commissioner, 1993; amd. Sec. 3, Ch. 45, L. 2001; amd. Sec. 2, Ch. 174, L. 2003; amd. Sec. 8, Ch. 285, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 285 in (1)(f) after "system" inserted "that includes an analysis of how market performance is affecting the actuarial funding of the retirement system"; and inserted (4) requiring board to make available to legislature copies of annual actuarial valuation and required transactions and market performance reports. Amendment effective June 1, 2007.

19-20-202. Per diem and expenses of board members. The members of the retirement board shall serve without direct or indirect compensation except that each appointed member shall receive \$50 per day and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day in attendance at the meetings of the board or in the execution of duties as a member of the retirement board. All per diem and expenses paid under the provisions of this section must be paid from the expense account of the retirement system.

History: En. 75-6204 by Sec. 99, Ch. 5, L. 1971; amd. Sec. 1, Ch. 507, L. 1973; amd. Sec. 51, Ch. 439, L. 1975; R.C.M. 1947, 75-6204; amd. Sec. 3, Ch. 672, L. 1983; Sec. 19-4-202, MCA 1991; redes. 19-20-202 by Code Commissioner, 1993; amd. Sec. 3, Ch. 90, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 90 in last sentence substituted "expense account" for "expense fund"; and made minor changes in style. Amendment effective March 30, 2007.

19-20-203. Officers and employees of retirement board. (1) It is the duty of the retirement board to:

(a) elect a presiding officer from its membership;

(b) appoint a secretary, who may be one of its members;

(c) employ technical or administrative employees who are necessary for the transaction of the business of the retirement system and establish their compensation pursuant to Title 2, chapter 18; and

(d) designate an actuary who meets the qualifications established by the retirement board to assist the retirement board with the technical actuarial aspects of the operation of the retirement system, which includes establishing mortality and service tables and making an actuarial investigation at least once every 5 years into the mortality, service, and compensation experience of the members and beneficiaries of the retirement system.

(2) A quorum of the board is three members.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(2) thru (4), (8), (10); amd. Sec. 1, Ch. 24, L. 1987; amd. Sec. 1, Ch. 490, L. 1987; Sec. 19-4-203, MCA 1991; redes. 19-20-203 by Code Commissioner, 1993; amd. Sec. 3, Ch. 111, L. 1995; amd. Sec. 33, Ch. 532, L. 1997.

19-20-204. Board's policy governing creditable service. It is the duty of the retirement board to adopt policies for the determination of creditable service in the retirement system implementing the following guidelines:

(1) One year's creditable service shall be awarded for each year of full-time service, outside of vacation periods, but no more than 1 year's creditable service shall be awarded for service during the same school fiscal year.

(2) Not more than 1 month's creditable service shall be awarded for 1 or more continuous months of absence without pay.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(14); Sec. 19-4-204, MCA 1991; redes. 19-20-204 by Code Commissioner, 1993.

19-20-205. Board to determine membership. It is the duty of the retirement board to determine the eligibility of a person to become a member of the retirement system in accordance with the provisions of 19-20-302.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(12); Sec. 19-4-205, MCA 1991; redes. 19-20-205 by Code Commissioner, 1993.

19-20-206. Board to grant benefits. It is the duty of the retirement board to grant retirement, disability, and other benefits under the provisions of this chapter. However, benefits will be granted only if the board decides, in its discretion as limited by law, that an applicant for benefits is entitled to those benefits. All applicants who are in similar circumstances must be treated alike.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(15); Sec. 19-4-206, MCA 1991; redes. 19-20-206 by Code Commissioner, 1993; amd. Sec. 4, Ch. 45, L. 2001.

19-20-207. Repealed. Sec. 11, Ch. 111, L. 1995.

History: En. 75-6219 by Sec. 7, Ch. 507, L. 1973; R.C.M. 1947, 75-6219; Sec. 19-4-207, MCA 1991; redes. 19-20-207 by Code Commissioner, 1993.

19-20-208. Duties of employer. Each employer shall:

(1) pick up the contribution of each employed member at the rate prescribed by 19-20-602 and transmit the contribution each month to the executive director of the retirement board;

(2) transmit to the executive director of the retirement board the employer's contribution prescribed by 19-20-605, at the time that the employee contributions are transmitted;

(3) keep records and, as required by the retirement board, furnish information to the board that is required in the discharge of the board's duties;

(4) upon the employment of a person who is required to become a member of the retirement system, inform the person of the rights and obligations relating to the retirement system;

(5) each month, report the name, social security number, and gross earnings of each retired member of the system who has been employed in a part-time teaching, administrative, or faculty position under the reemployment provisions of 19-20-731;

(6) whenever applicable, inform an employee of the right to elect to participate in the optional retirement program under Title 19, chapter 21;

(7) at the request of the retirement board, certify the names of all persons who are eligible for membership or who are members of the retirement system;

(8) notify the retirement board of the employment of a person eligible for membership and forward the person's membership application to the board;

(9) if the employer has converted to earned compensation amounts excluded from earned compensation, for each retiring member, certify to the board the amounts reported to the system in each of the 5 years preceding the member's retirement.

History: En. 75-6214 by Sec. 109, Ch. 5, L. 1971; amd. Sec. 10, Ch. 127, L. 1977; amd. Sec. 8, Ch. 331, L. 1977; R.C.M. 1947, 75-6214(part); amd. Sec. 5, Ch. 464, L. 1985; amd. Sec. 11, Ch. 494, L. 1987; Sec. 19-4-208, MCA 1991; redes. 19-20-208 by Code Commissioner, 1993; amd. Sec. 7, Ch. 442, L. 1997; amd. Sec. 3, Ch. 174, L. 2003; amd. Sec. 1, Ch. 320, L. 2005.

19-20-209 through 19-20-211 reserved.

19-20-212. General internal revenue service qualification rules. (1) The board shall distribute the corpus and income of the system to the members and their beneficiaries in accordance with the system's law. The corpus and income may not, at any time before the satisfaction of all liabilities with respect to members and their beneficiaries, be used for, or diverted to, purposes other than the exclusive benefit of the members and their beneficiaries.

(2) Forfeitures arising from severance of employment, from death, or for any other reason may not be applied to increase the benefits that any member would otherwise receive under the state's law. However, forfeitures may be used to reduce the costs of administration.

(3) Distributions from the system may be made only upon retirement, separation from service, disability, or death.

(4) Notwithstanding any provision of law to the contrary, contributions, benefits, and service credit with respect to qualified military service must be provided in accordance with section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301, et seq.

(5) (a) If at any time that the board finds that benefits payable or contributions required under this chapter would exceed the limits established under section 415 of the Internal Revenue Code, the board may establish a qualified governmental excess benefit arrangement and adopt rules for the necessary and appropriate procedures for the administration of the benefit arrangement in accordance with the Internal Revenue Code and this section.

(b) An excess benefit arrangement established pursuant to this section is subject to the following requirements:

(i) The amount of any annual benefit that would exceed the limitations imposed by section 415 of the Internal Revenue Code must be paid from the benefit arrangement.

(ii) The amount of a contribution that would exceed the limitation imposed by section 415 of the Internal Revenue Code must be credited to the benefit arrangement.

(iii) The benefit arrangement must be a separate part of the system.

(iv) The benefit arrangement must be maintained solely for the purpose of providing to members in the system that part of the member's annual benefit or contribution otherwise payable under the terms of this chapter that exceeds the limitations on benefits or contributions imposed by section 415 of the Internal Revenue Code.

(v) Members may not elect, directly or indirectly, to defer compensation to the benefit arrangement.

(6) The limitation year for purposes of section 415 of the Internal Revenue Code is the school year beginning September 1 and ending August 31.

(7) The plan year is the fiscal year beginning July 1 and ending June 30.

History: En. Sec. 4, Ch. 111, L. 1999; amd. Sec. 4, Ch. 174, L. 2003; amd. Sec. 2, Ch. 320, L. 2005.

19-20-213 and 19-20-214 reserved.

19-20-215. Presentation to board of investments. The retirement board shall annually at a public meeting present to the board of investments established in 2-15-1808 a financial and actuarial report of the retirement system and brief the board of investments on any benefit changes being considered by the retirement board that may affect trust fund obligations.

History: En. Sec. 3, Ch. 285, L. 2007.

Compiler's Comments

Effective Date: Section 11, Ch. 285, L. 2007, provided that this section is effective June 1, 2007.

Part 3 Membership

19-20-301. Membership application. Whenever a person becomes a member of the retirement system as required by 19-20-302, he shall complete an application form prescribed by the retirement board.

History: En. 75-6212 by Sec. 107, Ch. 5, L. 1971; amd. Sec. 5, Ch. 507, L. 1973; amd. Sec. 8, Ch. 127, L. 1977; amd. Sec. 7, Ch. 331, L. 1977; R.C.M. 1947, 75-6212(1); Sec. 19-4-301, MCA 1991; redes. 19-20-301 by Code Commissioner, 1993.

19-20-302. Active membership. (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system:

- (a) a person who is a teacher, principal, or district superintendent as defined in 20-1-101;
- (b) a person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system and who has not elected or is not required to participate in the optional retirement program under Title 19, chapter 21;
- (c) a person employed as a speech-language pathologist, school nurse, paraprofessional who provides instructional support, or school psychologist or in a teaching capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;
- (d) a person who is an administrative officer or a member of the instructional staff of the board of public education;
- (e) the superintendent of public instruction or a person employed in an instructional services capacity by the office of public instruction; and
- (f) a person elected to the office of county superintendent of schools.

(2) A retired member elected to the office of county superintendent of schools or appointed to complete the term of an elected county superintendent of schools after July 1, 1995, is not eligible for optional membership in the public employees' retirement system under the provisions of 19-3-412 and shall, within 30 days of taking office, file an irrevocable written election to become or to not become an active member of the teachers' retirement system. The retirement system membership of an elected county superintendent of schools as of June 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.

(3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:

- (a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and
 - (b) have the compensation for the person's creditable service totally paid by an employer.
- (4) (a) A substitute teacher or a part-time teacher's aide:
- (i) shall file an irrevocable written election determining whether to become an active member of the retirement system on the first day of employment; or
 - (ii) is required to become an active member of the retirement system after completing 210 hours of employment in any fiscal year if the substitute teacher or part-time teacher's aide has not elected membership under subsection (4)(a)(i).

(b) Once a part-time teacher's aide becomes a member, the aide is required to remain an active member as long as the aide is employed in that capacity. Once a substitute teacher becomes a member, the substitute teacher is required to remain a member as long as the teacher is available for employment in that capacity.

(c) The employer shall give written notification to a substitute teacher or part-time teacher's aide on the first day of employment of the option to elect membership under subsection (4)(a)(i).

(d) If a substitute teacher or part-time teacher's aide declines to elect membership during the election period, the teacher or part-time teacher's aide shall file a written statement with the employer waiving membership and the employer shall retain the statement.

(5) A school district clerk or business official may not become a member of the teachers' retirement system. A school district clerk or business official who is a member of the system on

July 1, 2001, is required to remain an active member of the system while employed in that capacity, and any postretirement earnings from employment as a school district clerk or school business official are subject to the limit on earnings provided in 19-20-731.

(6) At any time that a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the person's eligibility for membership. All persons in similar circumstances must be treated alike.

(7) As used in this section, "part-time teacher's aide" means an individual who works less than 7 hours a day assisting a certified teacher in a classroom.

(8) (a) An active member of the system concurrently employed in a position identified in subsection (1)(b) may not elect to participate in the optional retirement program under Title 19, chapter 21.

(b) An employee of the Montana university system who is a participant in the optional retirement program under Title 19, chapter 21, and who is concurrently employed in a position identified in subsections (1)(a) or (1)(c) through (1)(f) is ineligible to be an active member of this system.

History: En. 75-6209 by Sec. 104, Ch. 5, L. 1971; amd. Sec. 6, Ch. 127, L. 1977; amd. Sec. 6, Ch. 331, L. 1977; R.C.M. 1947, 75-6209; amd. Sec. 1, Ch. 221, L. 1981; amd. Sec. 1, Ch. 210, L. 1983; amd. Sec. 1, Ch. 22, L. 1987; amd. Sec. 1, Ch. 296, L. 1987; amd. Sec. 12, Ch. 494, L. 1987; amd. Sec. 6, Ch. 658, L. 1987; amd. Sec. 2, Ch. 56, L. 1989; amd. Sec. 1, Ch. 178, L. 1993; Sec. 19-4-302, MCA 1991; redes. 19-20-302 by Code Commissioner, 1993; amd. Sec. 4, Ch. 111, L. 1995; amd. Sec. 10, Ch. 308, L. 1995; amd. Sec. 108, Ch. 42, L. 1997; amd. Sec. 5, Ch. 111, L. 1999; amd. Sec. 5, Ch. 45, L. 2001; amd. Sec. 3, Ch. 402, L. 2003; amd. Sec. 3, Ch. 320, L. 2005; amd. Sec. 4, Ch. 90, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 90 in (1)(c) inserted "paraprofessional who provides instructional support"; in (2) in first sentence near middle after "19-3-412 and" substituted "shall" for "may" and substituted "file an irrevocable written election" for "elect"; deleted former (4)(c) and (4)(d) that read: "(c) A person employed as a substitute teacher on July 1, 1999, who has not elected to become a member by that date shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of employment as a substitute in the next school year after July 1, 1999.

(d) A person employed as a part-time teacher's aide on July 1, 2001, who is not a member of the retirement system shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of employment as a part-time teacher's aide after July 1, 2001"; inserted (8)(a) and (8)(b) regarding participation in optional retirement program; and made minor changes in style. Amendment effective March 30, 2007.

19-20-303. Inactive membership. Any person's active membership in the retirement system shall terminate, but he shall be an inactive member, when:

(1) he ceases to be employed in a capacity that allows his membership and he has 5 or more years of creditable service in the retirement system;

(2) he ceases to be employed in a capacity that allows his membership and he has less than 5 years of creditable service in the retirement system, but his loss of capacity to be a member was caused by a personal illness determined by the retirement board to be a disability or was caused by service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or by service in the American red cross or merchant marine during time of war; or

(3) he has 5 or more years creditable service and he becomes a member of any other retirement or pension system supported wholly or in part by moneys of another government agency, except the federal social security retirement system, and the membership in the other retirement system would allow credit for the same employment service in two retirement systems. However, no person shall be excluded from active membership solely because he is receiving or is eligible to receive retirement benefits from another retirement system.

History: En. 75-6210 by Sec. 105, Ch. 5, L. 1971; R.C.M. 1947, 75-6210; Sec. 19-4-303, MCA 1991; redes. 19-20-303 by Code Commissioner, 1993.

19-20-304. Membership termination. The active or inactive membership in the retirement system of any person terminates when:

(1) he retires on a retirement allowance of the retirement system;

(2) he dies;

(3) he withdraws his accumulated contributions to the retirement system under the provisions of 19-20-603; or

(4) he ceases to be employed in a capacity that allows his membership, he has less than 5 years of creditable service in the retirement system, and he cannot qualify under the provisions of 19-20-303(2).

History: En. 75-6211 by Sec. 106, Ch. 5, L. 1971; amd. Sec. 7, Ch. 127, L. 1977; R.C.M. 1947, 75-6211; Sec. 19-4-304, MCA 1991; redes. 19-20-304 by Code Commissioner, 1993.

19-20-305. Alternate payees — family law orders. (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "alternate payee" means the former spouse of the member or retiree who is entitled to an actuarially equivalent portion or a fixed amount of the member's or retiree's retirement benefit;

(b) "family law order" means a certified copy of a judgment, decree, or order of a court with competent jurisdiction concerning spousal maintenance or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section; and

(c) "participant" means a member or retiree of the retirement system.

(3) A family law order must identify an alternate payee by full name, current address, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the retirement system; or

(b) an amount of payment greater than that available to a participant.

(5) (a) The service, disability, or survivor retirement benefit payments or withdrawals of member contributions may be apportioned to an alternate payee by directing payment of:

(i) an actuarially equivalent amount payable; or

(ii) a fixed amount of no more than the amount payable to the participant. A fixed amount must be payable for a determinate period of time not greater than the life of the participant.

(b) (i) The actuarially equivalent service, disability, or survivor retirement benefit payable to the alternate payee must be calculated by taking the total years of service for which the benefit was earned during the marriage divided by the total years of creditable service used in the calculation of the retirement benefit, multiplied by a percentage share of the benefit payable to the alternate payee, multiplied by the total amount payable to the participant.

(ii) The amount payable must be actuarially adjusted to provide a benefit payable for the alternate payee's lifetime.

(c) The participant's benefit must be reduced by the amount determined under subsection (5)(b)(i).

(6) The duration of payments to an alternate payee may be limited only to a specified maximum time or for the life of the alternate payee.

(7) If a participant elects to withdraw the accumulated contributions and forfeit all rights to service, disability, or survivor benefits, the alternate payee is entitled to a percentage of the amount payable as determined by the formula in subsection (5)(b)(i).

(8) Retirement benefit adjustments for which a participant is eligible after retirement must be apportioned in the same manner as determined under subsection (5)(b)(i).

(9) Payments of monthly benefits to the alternate payee must commence on the latest of the following dates:

(a) the date the participant begins receiving benefits; or

(b) the first day of the month following receipt of a certified family law order.

(10) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

(11) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

(12) If the participant retired on a disability retirement benefit and the benefit is subsequently canceled pursuant to 19-20-903 or 19-20-905, the alternate payee's payments also terminate. When the participant again qualifies for retirement benefits, the amount payable to the alternate payee must be recalculated pursuant to this section.

History: En. Sec. 9, Ch. 111, L. 1995; amd. Sec. 8, Ch. 442, L. 1997; amd. Sec. 5, Ch. 90, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 90 inserted definition of alternate payee; substituted definition of participant for former definition of participant that read: "participant" means a member, retiree, or an actual or potential beneficiary, survivor, or contingent annuitant of the retirement system designated pursuant to this chapter"; in definition of family law order after "jurisdiction concerning" deleted "child support, parental support"; in (4)(a) near end after "participant under the" deleted "appropriate"; in (4)(b) near beginning after "an amount" deleted "or duration" and at end deleted "under the appropriate retirement system"; in (5) deleted former introductory phrase that read: "A family law order may only provide for payment to an alternate payee as follows"; in (5)(a) at beginning inserted "disability, or survivor" and near end inserted "to an alternate payee"; in (5)(a)(i) substituted "an actuarially equivalent" for "a percentage of the"; in (5)(a)(ii) at beginning deleted "payment of" and inserted second sentence regarding payment of fixed amount; substituted (5)(b) and (5)(c) regarding calculation of retirement benefit and reduction of participant's benefit for former (5)(b) through (5)(e) that read: "(b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(d) Payments must be limited to the life of the appropriate participant. The duration of payments to an alternate payee may be further limited only to a specified maximum time, the life of the alternate payee, or the life of a specified participant. Payments to an alternate payee may be limited to a specific amount per month if the number of payments is specified. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(e) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system allows for that option"; inserted (6) through (9) regarding payment of benefits to alternate payees; inserted (12) regarding cancellation of payments to alternate payee; and made minor changes in style. Amendment effective March 30, 2007.

19-20-306. Execution or withholding for support obligation. (1) Benefits in the retirement system are subject to execution and income withholding for the payment of a participant's support obligation.

(2) For purposes of this section:

(a) "Execution" means a warrant for distraint issued or a writ of execution obtained by the department of public health and human services when providing support enforcement services under Title IV-D of the Social Security Act.

(b) "Income withholding" means an income-withholding order issued under the provisions of Title 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in 40-5-157.

(c) "Participant" means a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system designated pursuant to this chapter.

(d) "Support obligation" has the meaning provided in 40-5-403 for support order.

(3) The execution or income-withholding order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the retirement system; or

(b) an amount or duration of payment greater than that available to a participant under the retirement system.

(4) The execution or income-withholding order may only provide for payment as follows:

(a) Service retirement benefit payments or withdrawals of member contributions may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be apportioned and paid under this section is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(d) Payments must be limited to the life of the appropriate participant. The duration of payments under this section may be further limited only to a specified maximum time or the life of a specified participant. Payments may also be limited to a specific amount per month if the number of payments is specified.

History: En. Sec. 15, Ch. 552, L. 1997.

Part 4 **Creditable Service**

19-20-401. Creditable service. (1) The creditable service of a member begins on the date of the member's employment in a capacity prescribed for eligibility in 19-20-302 and accumulates to the member's credit on the basis of the retirement board's policy governing creditable service.

(2) The creditable service of a member includes the following:

(a) each year of service for which contributions to the retirement system were deducted from the member's compensation under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, this chapter, and their subsequent amendments, except that credit may not be awarded for those years of service for which the contributions have been withdrawn and not replaced;

(b) any service awarded by a prior service certificate issued under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, and their subsequent amendments or under the provisions of 19-20-406;

(c) any out-of-state employment service awarded by the retirement board under the provisions of 19-20-402;

(d) any service awarded for employment while on leave under 19-20-403;

(e) any service in the military, red cross, or merchant marine awarded by the retirement board under 19-20-404;

(f) any employment service awarded by the retirement board under the provisions of 19-20-408;

(g) any service transferred after October 1, 1989, from the public employees' retirement system under 19-20-409;

(h) any service awarded by the retirement board for extension service employment under 19-20-410;

(i) any service awarded for absence because of employment-related injury under 19-20-411; and

(j) any service awarded for service purchased under 19-20-426.

(3) The retirement board's determination of creditable service under this section is final and conclusive for the purposes of the retirement system unless, at any time, the board discovers an error or fraud in the establishment of creditable service, in which case the board shall redetermine the creditable service.

(4) For a member completing only part-time service during the qualifying period, the first full year's teaching salary used to calculate the cost to purchase creditable service is the salary that the member would have earned if the member's first year part-time salary had been full-time.

History: En. 75-6212 by Sec. 107, Ch. 5, L. 1971; amd. Sec. 5, Ch. 507, L. 1973; amd. Sec. 8, Ch. 127, L. 1977; amd. Sec. 7, Ch. 331, L. 1977; R.C.M. 1947, 75-6212(2) thru (4); amd. Sec. 2, Ch. 551, L. 1981; amd. Sec. 2, Ch. 38, L. 1987; amd. Sec. 2, Ch. 79, L. 1987; amd. Sec. 3, Ch. 56, L. 1989; amd. Sec. 2, Ch. 690, L. 1989; Sec. 19-4-401, MCA 1991; red. 19-20-401 by Code Commissioner, 1993; amd. Sec. 4, Ch. 320, L. 2005.

19-20-402. Creditable service for employment in out-of-state public and federal schools. (1) (a) A member who has 5 years of active membership service, who has completed 1 full year of active membership in Montana subsequent to the member's out-of-state service, and who contributes to the retirement system as provided in subsection (2) may receive creditable service in the retirement system for out-of-state service that would have been acceptable under the provisions of this chapter if the service had been performed in the state of Montana.

(b) If the member contributed to a public retirement plan, other than social security, while performing the out-of-state service, the member shall roll the member's contributions over into

the retirement system or must receive a refund of the member's contributions for the service before purchasing service under this section.

(c) For the purpose of this section, out-of-state service means service performed:

(i) within the United States in a federal or other public school or institution; and

(ii) outside the United States in a federal or other public or private school or institution.

(2) (a) To purchase the service described in subsection (1)(c)(i), a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned in Montana after the member's out-of-state service, plus interest. The contribution rate must be the rate in effect at the time the member is eligible for the service.

(b) To purchase the service described in subsection (1)(c)(ii), a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned in Montana after the member's out-of-state service or after the salary was reported to the system for the fiscal year beginning July 1, 1989, whichever date is later, plus interest. The contribution rate must be the rate in effect at the time the member is eligible to purchase the service or the rate in effect on July 1, 1989, whichever date is later.

(c) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service.

(4) The contributions and interest required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(1); amd. Sec. 1, Ch. 295, L. 1979; amd. Sec. 2, Ch. 113, L. 1989; amd. Secs. 1, 5, Ch. 357, L. 1989; Sec. 19-4-402, MCA 1991; reded. 19-20-402 by Code Commissioner, 1993; amd. Sec. 1, Ch. 136, L. 1995; amd. Sec. 6, Ch. 45, L. 2001; amd. Sec. 5, Ch. 174, L. 2003.

19-20-403. Creditable service for employment while on leave. (1) (a) A member who is eligible under subsection (1)(b) and who contributes to the retirement system as provided in subsection (2) may receive up to 2 years of creditable service for employment while on leave.

(b) To be eligible to purchase service under this section, a member must have at least 5 years of membership service in the retirement system, must have been a member prior to the leave, and must have completed 1 year of active membership in Montana subsequent to the member's return.

(2) (a) For each year of service to be credited, a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contributions for the member's first full year's teaching salary earned in Montana after the member's return from leave, plus interest.

(b) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent actuarial valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service.

(4) The contributions and interest may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(2); amd. Sec. 3, Ch. 113, L. 1989; amd. Secs. 2, 5, Ch. 357, L. 1989; Sec. 19-4-403, MCA 1991; reded. 19-20-403 by Code Commissioner, 1993; amd. Sec. 2, Ch. 136, L. 1995; amd. Sec. 7, Ch. 45, L. 2001.

19-20-404. Creditable service for active service in military, red cross, or merchant marine. (1) A member may receive up to 4 years of creditable service without cost for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, during the Korean war between June 1, 1950, and January 31, 1955, and the Vietnam conflict between December 22, 1961, and May 7, 1975, dates inclusive, if the member has 5 years or more of creditable service in the retirement system. To receive credit for this service, a member shall submit to the board a written application and proper certification of the member's military service.

(2) If a member is ineligible for service credit under subsection (1), the member may apply under the provisions of this subsection for creditable service in the retirement system for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or in the American red cross or merchant marine. The person must be awarded creditable service, conditional upon the person's completing 5 years of active membership in Montana, for the number of years, not exceeding 2, that the retirement board determines to be creditable service, if the person contributes to the retirement system an amount equal to the combined employer and employee contributions for the person's first full year's teaching salary earned in Montana following the active service in the armed forces of the United States, the American red cross, or the merchant marine for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in the person's account upon completion of 5 years of membership service in Montana. The contribution rate is that rate in effect at the time the person is eligible for the service.

(3) The contribution required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the person and the retirement board.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(3); amd. Sec. 1, Ch. 193, L. 1981; amd. Sec. 4, Ch. 113, L. 1989; amd. Sec. 1, Ch. 204, L. 1989; amd. Sec. 1, Ch. 185, L. 1993; Sec. 19-4-404, MCA 1991; redes. 19-20-404 by Code Commissioner, 1993; amd. Sec. 6, Ch. 111, L. 1999; amd. Sec. 34, Ch. 7, L. 2001; amd. Sec. 8, Ch. 45, L. 2001.

19-20-405. Limit on creditable service that may be awarded. The total creditable service for service purchased under 19-20-402 through 19-20-404, 19-20-408, and 19-20-410(1) may not exceed 5 years.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(4); amd. Sec. 3, Ch. 79, L. 1987; Sec. 19-4-405, MCA 1991; redes. 19-20-405 by Code Commissioner, 1993; amd. Sec. 3, Ch. 136, L. 1995; amd. Sec. 1, Ch. 408, L. 1997; amd. Sec. 7, Ch. 111, L. 1999.

19-20-406. Creditable service for prior service. A member who is retiring with at least 5 years of creditable service and who has been an active member for at least 5 consecutive school fiscal years may request creditable service for any employment service he rendered prior to September 1, 1937, for which he has not received a prior service certificate. In order to receive the creditable service, he must apply for it and provide certification of the prior service. The retirement board shall determine the amount of creditable service to be awarded, if any, and issue a prior service certificate.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(5); Sec. 19-4-406, MCA 1991; redes. 19-20-406 by Code Commissioner, 1993.

19-20-407. No duplication of credit for same period of service. A member may not receive duplicate credit for the same period of service. A retiree returning to active service may not be granted creditable service for the same period of time that the retiree was receiving a retirement benefit.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(9); Sec. 19-4-407, MCA 1991; redes. 19-20-407 by Code Commissioner, 1993; amd. Sec. 2, Ch. 408, L. 1997; amd. Sec. 5, Ch. 320, L. 2005.

19-20-408. Creditable service for employment in private schools. (1) (a) A member who has at least 5 years of membership service, who has completed 1 full year of active membership subsequent to the member's private school employment, and who contributes to the retirement system as provided in subsection (2) may receive up to 5 years of creditable service in

the retirement system for employment within the United States in a private elementary, secondary, or postsecondary educational institution.

(b) Employment to be credited must be of an instructional nature, as an administrative officer, or as a member of the scientific staff. If the employment is for teaching kindergarten through grade 12, the service must have been performed as a certified teacher.

(c) Members may not receive credit for service as a student employed by a private elementary, secondary, or postsecondary educational institution.

(2) (a) For each year of service to be credited, a member who became a member before July 1, 1989, shall contribute to the retirement system an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned after becoming a member of the retirement system or after returning to the retirement system, whichever is later, plus interest. The contribution rate must be that rate in effect at the time the member is eligible to purchase the service.

(b) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service.

(4) The contributions and interest may be made in lump-sum payment or in installments as agreed between the person and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section.

History: En. Sec. 1, Ch. 551, L. 1981; amd. Sec. 5, Ch. 113, L. 1989; Sec. 19-4-408, MCA 1991; redes. 19-20-408 by Code Commissioner, 1993; amd. Sec. 4, Ch. 136, L. 1995; amd. Sec. 9, Ch. 45, L. 2001.

19-20-409. Transfer of service credits and contributions from public employees' retirement system. (1) An active member may at any time before retirement file a written application with the retirement board to purchase all of the member's previous creditable service in the public employees' retirement system. The amount that must be paid to the retirement system to purchase this service under this section is the sum of subsections (2) and (3).

(2) The public employees' retirement system shall transfer to the teachers' retirement system an amount equal to 72% of the amount paid by the member.

(3) The member shall pay either directly or by transferring contributions on account with the public employees' retirement system an amount equal to the member's accumulated contributions at the time that active membership was terminated, plus accrued interest. Interest must be calculated from the date of termination until a transfer is received by the retirement system, based on the interest tables in use by the public employees' retirement system.

(4) A member who purchases service from the public employees' retirement system in the teachers' retirement system must have completed 5 years of membership service in the teachers' retirement system to receive credit or purchase military service, out-of-state service, employment while on leave, and private school employment.

(5) The retirement board shall determine the service credits that may be transferred.

(6) If an active member who also has creditable service in the public employees' retirement system before becoming a member of the teachers' retirement system dies before purchasing this service in the teachers' retirement system and if the member's service credits from both systems, when combined, entitle the member's beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers' retirement system. Before payment of the death benefit, the public employees' retirement board must transfer to the teachers' retirement system the contributions necessary to purchase this service in the teachers' retirement system as provided in subsections (2) and (3).

(7) (a) If the teachers' retirement board determines that an individual's membership was erroneously classified and reported to the public employees' retirement system, the public employees' retirement board shall transfer to the teachers' retirement system the member's accumulated contributions and service, together with employer contributions plus interest.

(b) For the period of time that the employer contributions are held by the public employees' retirement system, interest paid on employer contributions transferred under this subsection (7) must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request.

(c) Any employee and employer contributions due as calculated in 19-20-602 and 19-20-605, plus interest, are the liability of the employee and the employing entity where the error occurred.

(8) A vested member who participated in the public employees' retirement system defined contribution plan provided for in Title 19, chapter 3, part 21, prior to becoming a member of the teachers' retirement system may purchase creditable service for the time spent as a participant in the defined contribution plan if:

(a) the member has completed at least 1 full year in the teachers' retirement system following the member's public employees' retirement system service;

(b) for each full year or portion of a year to be purchased pursuant to this subsection (8), the member contributes the actuarial cost of the service based on the most recent valuation of the system; and

(c) the member has withdrawn the member's money in the member's public employees' retirement system defined contribution plan account or has rolled over the amount required to purchase service in accordance with this subsection (8).

(9) Creditable service purchased under subsection (8) must be determined according to the laws and rules governing service credit in the public employees' retirement system.

History: En. Sec. 2, Ch. 290, L. 1983; amd. Sec. 3, Ch. 690, L. 1989; amd. Sec. 2, Ch. 64, L. 1991; Sec. 19-4-409, MCA 1991; redes. 19-20-409 by Code Commissioner, 1993; amd. Sec. 26, Ch. 412, L. 1995; amd. Sec. 9, Ch. 442, L. 1997; amd. Sec. 10, Ch. 45, L. 2001.

19-20-410. Creditable service for extension service employment. (1) (a) At any time before retirement, a member with 5 years or more of creditable service in the retirement system may file a written application with the retirement board to purchase up to 5 years of employment service with the Montana cooperative extension service, subject to the limitation contained in 19-20-405, if:

(i) the member became a member of the retirement system before July 1, 1989;

(ii) the service involved instructional service at a unit of the Montana university system; and

(iii) the member received a refund of membership contributions under the civil service retirement system or the federal employees' retirement system for the service to be purchased.

(b) For each year of service to be purchased under subsection (1)(a), the member shall contribute to the retirement system an amount equal to the combined employer and employee contribution rate in effect at the time that the member is eligible to purchase the service multiplied by the member's first full year's teaching salary earned after becoming a member of the retirement system, plus interest at the rate that the contribution would have earned had the contribution been in the member's account upon the completion of 5 years of membership service.

(2) In addition to service purchased under subsection (1) and subject to 19-20-407, a member who has purchased 5 years or more of creditable service in the retirement system may purchase additional years of cooperative extension service by contributing to the system the full actuarial cost of the service.

(3) Contributions to purchase service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the retirement board.

History: En. Sec. 1, Ch. 79, L. 1987; amd. Sec. 6, Ch. 113, L. 1989; Sec. 19-4-410, MCA 1991; redes. 19-20-410 by Code Commissioner, 1993; amd. Sec. 3, Ch. 408, L. 1997; amd. Sec. 11, Ch. 45, L. 2001.

19-20-411. Absence because of employment-related injury. (1) Subject to the limitation in subsection (6), a member who is absent because of an injury entitling the member to workers' compensation payments may purchase as creditable service the time during which the member is absent. To purchase this service, a member shall contribute to the retirement system as provided in subsection (2) upon the member's return to contributing membership service.

(2) (a) A member who became a member before July 1, 1989, shall contribute an amount equal to:

(i) the contributions that the member would have made had the member not been absent, based on the member's compensation at the commencement of the absence;

(ii) the interest that begins to accrue 1 year from the date that the member returns to covered employment; and

(iii) the interest not paid by the employer under subsection (3).

(b) A member who became a member on or after July 1, 1989, shall pay the actuarial cost of the service based on the most recent valuation of the system.

(3) When a member elects to contribute under subsection (2)(a), the employer shall contribute an amount equal to the contributions that would have been made by the employer had the member not been absent, based on the member's compensation at the commencement of the absence. The employer may contribute an amount equal to the interest accruing on the employer's contributions calculated in the same manner as interest on the employee's contributions under subsection (2)(a). If the employer elects not to pay the interest, this amount must be paid by the employee.

(4) A member shall file with the retirement board a written notice of the member's intent to pay the contributions under subsection (2).

(5) Payment of the employee's contributions may be made in one sum at the time of filing the notice or in installments before termination of covered employment as agreed between the board and the member.

(6) A member absent as provided in subsection (1) loses the right to contribute under this section if the member's accumulated normal contributions are refunded under 19-20-603.

(7) The maximum amount of membership service allowable under this section is 2 years.

History: En. Sec. 1, Ch. 38, L. 1987; amd. Sec. 7, Ch. 113, L. 1989; Sec. 19-4-411, MCA 1991; redes. 19-20-411 by Code Commissioner, 1993; amd. Sec. 5, Ch. 136, L. 1995; amd. Sec. 12, Ch. 45, L. 2001.

19-20-412. Repealed. Sec. 26, Ch. 111, L. 1999.

History: En. Sec. 1, Ch. 113, L. 1989; amd. Sec. 1, Ch. 8, L. 1991; Sec. 19-4-412, MCA 1991; redes. 19-20-412 by Code Commissioner, 1993; amd. Sec. 6, Ch. 136, L. 1995; amd. Sec. 10, Ch. 442, L. 1997.

19-20-413. Repealed. Sec. 26, Ch. 111, L. 1999.

History: En. Sec. 1, Ch. 13, L. 1991; Sec. 19-4-413, MCA 1991; redes. 19-20-413 by Code Commissioner, 1993.

19-20-414. Payment methods for purchase of service credit. (1) An active or vested member who is eligible to purchase service under this chapter may at any time before retirement apply to purchase the service credit by making payment as provided in this section.

(2) Subject to subsection (3), service credit may be purchased by one or a combination of the following methods:

(a) a lump-sum payment;

(b) installment payments;

(c) direct rollover of eligible distributions from a retirement plan in section 402(c)(8)(B)(iii) or 402(c)(8)(B)(iv) of the Internal Revenue Code;

(d) rollover of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be included in gross income;

(e) a direct trustee-to-trustee transfer from a governmental 457(b) deferred compensation plan or a 403(b) tax-sheltered annuity for permissive service credit, as defined in section 415(n) of the Internal Revenue Code.

(3) (a) The total amount transferred or rolled over to the retirement system pursuant to subsection (2) may not exceed the amount due to purchase the service.

(b) If, in the case of a transfer, the transferred account includes both tax-deferred and taxed amounts, the transferring agency shall identify the member's tax-deferred and taxed amounts at the time the transfer is made.

(4) To the extent permitted by section 401(a)(31) of the Internal Revenue Code and as limited by this section, the board shall accept a direct rollover of eligible distributions from another eligible retirement plan.

(5) If the member dies before having completed the payment required to purchase the service that the member had applied to purchase, the member's surviving spouse may, subject to the rules and regulations of the Internal Revenue Code, apply to complete the member's service

purchase as provided in this section. The surviving spouse must apply to complete the payments and pay the balance due to the system prior to the distribution of benefits.

History: En. Sec. 10, Ch. 111, L. 1995; amd. Sec. 8, Ch. 111, L. 1999; amd. Sec. 13, Ch. 45, L. 2001; amd. Sec. 6, Ch. 174, L. 2003; amd. Sec. 6, Ch. 90, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 90 in (1) at beginning substituted "An active or vested member" for "A member". Amendment effective March 30, 2007.

19-20-415. Procedure for purchase of service credit and pick up. (1) A member who wishes to redeposit, pursuant to 19-20-427, amounts previously withdrawn or who is eligible to purchase service credit pursuant to this part shall make the following series of elections to accomplish the redeposit or purchase:

(a) The member may elect a lump-sum payment, a series of installment payments, or a combination of lump-sum payments and installment payments.

(b) If a series of installment payments is elected by the member, the member may elect to pay the installments directly to the board or to have the installments paid by payroll deduction or the member may select a combination of both.

(c) With respect to installments payable by payroll deduction, if the member's employer has adopted the resolution described in subsection (2), the member shall complete the irrevocable written application to purchase service provided for in subsection (4). If the member's employer has not adopted the resolution, the member may elect only a revocable written application to purchase service.

(2) An employer may adopt a resolution to pick up and pay the member's elective contributions made pursuant to a binding, irrevocable written application. The contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member. The resolution must contain the following statements:

(a) that the member contributions, even though designated as member contributions for state law purposes, are being paid by the employer in lieu of the contributions by the member; and

(b) that the member may not choose to receive the contributed amounts directly instead of having them paid by the employer to the system.

(3) (a) With respect to any member's elective contributions, the effective date of the employer pickup is the later of:

(i) the adoption of the employer's resolution; or

(ii) the date that the irrevocable written application is signed by both the member and the member's employer.

(b) The pickup does not apply to a contribution made before the effective date of the employer's resolution. A written application to purchase additional service that is in effect on the effective date of the employer's resolution is void, and the provisions of subsection (1) apply.

(4) The irrevocable written application to purchase service must be signed by the member and the member's employer and filed with the board. Subject to any maximum amounts or duration established by state or federal law, the irrevocable written application must specify:

(a) the amount of the deduction;

(b) the number of installments;

(c) the number of years and type of service that the member is purchasing; and

(d) that the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the board in lieu of contributions by the member.

(5) The minimum duration of the installments required by subsection (4)(b) is 3 months, and the maximum duration is 5 years. The maximum number of years that may be purchased may not exceed the total number of years that the member is eligible to purchase.

(6) The irrevocable written application does not give the member the option of receiving the deduction amounts directly instead of having them paid by the employer to the system. A member may not prepay any amounts under a binding, irrevocable written application.

(7) If a member terminates or dies prior to completion of the installment payments, the binding, irrevocable written application expires and the board shall prorate the service credit purchased based upon the amount paid as of the date of termination or death. In the case of a termination, the member may make a lump-sum contribution for the balance of the service

subject to the limitations of section 415 of the Internal Revenue Code. In the case of the member's death, the payment to purchase service may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code.

History: En. Sec. 9, Ch. 111, L. 1999; amd. Sec. 14, Ch. 45, L. 2001; amd. Sec. 6, Ch. 320, L. 2005.

19-20-416. Credit for legislative service required. (1) A legislator who did not elect to continue to participate in the system, as provided under 5-2-304, and who subsequently participates as a member must be awarded creditable service for legislative service if the legislator contributes:

(a) an amount equal to the member contributions that would have been made if the legislator had elected membership; and

(b) interest at the rate that the contributions would have earned if they had been on deposit with the retirement system.

(2) The employer contribution must be made by the legislative branch in the amount that would have been contributed if the legislator had elected membership plus interest at the rate that the contributions would have earned if they had been on deposit with the retirement system.

History: En. Sec. 10, Ch. 111, L. 1999.

19-20-417. Credit for substitute teaching service, teacher's aide service, or other service not reported. (1) A substitute teacher or part-time teacher's aide who did not elect membership under 19-20-302 and who subsequently becomes a member must be awarded creditable service for the service not reported if the member contributes the employee and employer contributions that would have been made if the member had been a member from the date of hire, plus interest.

(2) A person who was employed in a capacity that would have been eligible for membership except for the fact that the person was employed for less than 30 days and who subsequently becomes an active member may purchase this service if the person contributes the employee and employer contributions that would have been made if the person had been a member from the date of hire, plus interest.

(3) If an employer fails to report a person who was eligible for membership under 19-20-302, the employee and employer shall make the contributions required by this chapter, plus interest.

(4) The contributions and interest may be made in a lump-sum payment or in installments as agreed to between the person and the board.

History: En. Sec. 11, Ch. 111, L. 1999; amd. Sec. 15, Ch. 45, L. 2001.

19-20-418 through 19-20-425 reserved.

19-20-426. Creditable service for employment under optional retirement program. (1) (a) A member who has at least 5 years of membership service, who has completed 1 full year of active membership subsequent to the member's participation in the optional retirement program pursuant to 19-21-201, and who contributes to the retirement system as provided in subsection (2) may receive up to 5 years of creditable service in the retirement system for service covered under the optional retirement program.

(b) Employment to be credited must be of an instructional nature, as an administrative officer, or as a member of the scientific staff with an individual contract under the authority of the board of regents.

(c) A member may not receive credit for service as a student employed by the institution.

(2) For each year of service to be credited under this section, the member shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The contributions and interest may be made in a lump-sum payment or in installments as agreed between the person and the retirement board.

(4) The provisions of 19-20-405 apply to creditable service purchased under this section.

History: En. Sec. 7, Ch. 320, L. 2005.

19-20-427. Redeposit of contributions previously withdrawn. In addition to the normal contributions required under 19-20-602, subject to the approval of the retirement board, and to the extent permitted by section 415(k)(3) of the Internal Revenue Code, a member may redeposit in the annuity savings account, by a single payment or by an increased rate of

contribution, an amount equal to the accumulated contributions that the member has previously withdrawn, plus interest in the amount that the contributions would have earned had the contributions not been withdrawn. The redeposit must be made in accordance with 19-20-415.

History: En. Sec. 9, Ch. 320, L. 2005; amd. Sec. 7, Ch. 90, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 90 in first sentence near middle substituted "account" for "fund". Amendment effective March 30, 2007.

Part 5 Management of Funds

19-20-501. Financial administration of money. The members of the retirement board are the trustees of all money collected for the retirement system, and as trustees, they shall provide for the financial administration of the money as provided in Article VIII, section 15, of the Montana constitution in the following manner:

- (1) The money must be invested and reinvested by the state board of investments.
- (2) The retirement board shall annually establish the rate of regular interest.
- (3) In accordance with the provisions of 19-20-605(7), the amount to be credited to each reserve must be allocated from the interest and other earnings on the money of the retirement system actually realized during the preceding fiscal year, less the amount allocated to administrative expenses. The administrative expenses of the retirement system, less amortization of intangible assets, may not exceed 1.5% of retirement benefits paid.
- (4) The state treasurer is the custodian of the collected retirement system money and of the securities in which the money is invested.
- (5) For purposes of Article VIII, section 12, of the Montana constitution, all the reserves established by part 6 of this chapter must be accounts in the pension trust fund type of the treasury fund structure of the state.

(6) Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination.

History: En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(1) thru (4), (7); amd. Sec. 3, Ch. 282, L. 1983; amd. Sec. 2, Ch. 8, L. 1991; Sec. 19-4-501, MCA 1991; redes. 19-20-501 by Code Commissioner, 1993; amd. Sec. 34, Ch. 532, L. 1997; amd. Sec. 16, Ch. 45, L. 2001; amd. Sec. 8, Ch. 90, L. 2007; amd. Sec. 5, Ch. 305, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 90 in (3) deleted former first sentence that read: "The retirement board shall annually divide among the several reserves of the retirement system an amount equal to the average balance of the reserves during the preceding fiscal year multiplied by the rate of regular interest." Amendment effective March 30, 2007.

Chapter 305 in (2) deleted former second sentence that read: "The rate established by the board may not be less than 4%"; in (3) near middle of second sentence substituted reference to 19-20-605(7) for reference to 19-20-605(5); and made minor changes in style. Amendment effective July 1, 2007.

19-20-502. Restrictions on use of money. (1) A member of the retirement board or an employee of the board may not:

- (a) have an interest, directly or indirectly, in the gains or profits of any investment of money of the retirement system, except as provided in this section;
- (b) directly or indirectly, for the member or employee or as an agent, in any manner use the money or deposits of the retirement system except to make current and necessary expenditures authorized by the retirement board; or
- (c) become an endorser or surety or in any manner an obligor for money loaned by or borrowed from the retirement system.

(2) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

(3) The board may not engage in a transaction prohibited by section 503(b) of the Internal Revenue Code.

(4) The assets of the retirement system must remain in trust until a warrant for the assets has been paid or an electronic funds transfer of system assets has been made in accordance with law.

History: En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(5), (8); Sec. 19-4-502, MCA 1991; redes. 19-20-502 by Code Commissioner, 1993; amd. Sec. 12, Ch. 111, L. 1999; amd. Sec. 17, Ch. 45, L. 2001.

19-20-503. Transfer of dormant or unclaimed accounts. (1) The retirement board may, in its discretion, transfer the amount in the annuity savings account of an inactive member to the pension accumulation account if the annuity savings account has been dormant for a period of 7 years. A right of the member may not be jeopardized by the transfer, and the amount, including the interest the amount would have earned had the amount remained in the annuity savings account, must be transferred back to the member's annuity savings account upon the member's request.

(2) Retirement benefits must be claimed within 5 years of the date of the member's death. If the named beneficiary for the account or the heirs at law fail to claim and accept the benefits, the member's account balance reverts to the pension trust fund.

History: En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(6); Sec. 19-4-503, MCA 1991; redes. 19-20-503 by Code Commissioner, 1993; amd. Sec. 11, Ch. 442, L. 1997; amd. Sec. 9, Ch. 90, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 90 in (1) in first sentence substituted "accumulation account if the annuity savings account" for "accumulation fund if the account" and in second sentence inserted phrase regarding inclusion of interest amount would have earned had amount remained in annuity savings account. Amendment effective March 30, 2007.

19-20-504. Vesting of retirement allowances upon termination of system. Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded.

History: En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(9); Sec. 19-4-504, MCA 1991; redes. 19-20-504 by Code Commissioner, 1993.

19-20-505 through 19-20-509 reserved.

19-20-510. Probate and nonprobate transfer statutes superseded. If a provision of this chapter conflicts with a provision of Title 72, chapter 2, part 8, the provision of this chapter supersedes the conflicting provision of Title 72, chapter 2, part 8.

History: En. Sec. 19, Ch. 562, L. 1999.

Part 6

Funds — Contributions

19-20-601. Method of financing. The retirement board shall establish and maintain the funds described in this part, in which all of the assets of the retirement system shall be credited according to the purpose for which the assets are held.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(1); Sec. 19-4-601, MCA 1991; redes. 19-20-601 by Code Commissioner, 1993.

19-20-602. Annuity savings account — member's contribution. (1) The annuity savings account is an account in which the contributions for the members to provide for their retirement allowance or benefits must be accumulated in individual accounts for each member. The normal contribution of each member is 7.15% of the member's earned compensation.

(2) Contributions to and payments from the annuity savings account must be made in the following manner:

(a) Each employer, pursuant to section 414(h)(2) of the Internal Revenue Code:

(i) shall pick up and pay the contributions that would be payable by the member under this subsection (2) for service rendered after June 30, 1985;

(ii) shall pick up and pay the contributions that would be paid in the manner provided in 19-20-716; and

(iii) may pick up and pay the contributions that would be payable by the member pursuant to 19-20-415.

(b) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's earned compensation as defined in 19-20-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the retirement board.

(d) The deductions must be made notwithstanding that the minimum compensation provided by law for a member may be reduced by the deductions. Each member is considered to consent to the deductions prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge of all claims for the services rendered by the member during the period covered by the payment, except as to the benefits provided by the retirement system.

(3) The accumulated contributions of a member withdrawn by the member or paid to the member's estate or to the member's designated beneficiary in event of the member's death must be paid from the annuity savings account. Upon the retirement of a member, the member's accumulated contributions must be transferred from the annuity savings account to the pension accumulation account.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(2); amd. Sec. 1, Ch. 198, L. 1983; amd. Sec. 1, Ch. 527, L. 1983; amd. Sec. 7, Ch. 464, L. 1985; Sec. 19-4-602, MCA 1991; redes. 19-20-602 by Code Commissioner, 1993; amd. Sec. 5, Ch. 111, L. 1995; amd. Sec. 12, Ch. 442, L. 1997; amd. Sec. 13, Ch. 111, L. 1999; amd. Sec. 4, Ch. 360, L. 1999; amd. Sec. 8, Ch. 320, L. 2005; amd. Sec. 10, Ch. 90, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 90 in (1) in two places, in (2), and in (3) in three places substituted references to account for references to fund; and made minor changes in style. Amendment effective March 30, 2007.

19-20-603. Withdrawal of accumulated contributions — options. An inactive member electing to do so or a person whose membership terminates without a prospect or anticipation that the member will return to work for an employer within 60 days of termination may withdraw the member's accumulated contributions from the annuity savings account in the retirement system in accordance with the following provisions:

(1) An inactive member under the provisions of 19-20-303(1) or (3) may elect, without right of revocation, to withdraw the member's accumulated contributions. If the member does not withdraw the accumulated contributions, the member remains an inactive member of the retirement system with the right to qualify for its benefits.

(2) Upon recovery from a disabling illness or separation from the armed forces, a person qualifying as an inactive member under the provisions of 19-20-303(2) may withdraw the member's accumulated contributions unless the member returns to active membership.

(3) Upon written application to the board, a terminating member may have the payment of all or any portion of the member's accumulated contributions rolled over or transferred into another qualified plan designated by the member. The portion not rolled over or transferred must be paid directly to the terminating member. The board shall provide forms for filing the written application. The terminating member is responsible for correctly designating an account or plan eligible to receive the tax-deferred amount in order to continue the tax-deferred status of the amount. To the extent required by section 401(a)(31) of the Internal Revenue Code, the board shall allow members and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.

(4) If a nonvested member terminates with accumulated contributions of less than \$200, the board shall pay the accumulated contributions in a lump sum as soon as administratively feasible without a written application from the member unless there is a return to service. Upon the payment of accumulated contributions, the member is considered to have withdrawn from the system.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(6); amd. Sec. 1, Ch. 226, L. 1993; Sec. 19-4-603, MCA 1991; redes. 19-20-603 by Code Commissioner, 1993; amd. Sec. 13, Ch. 442, L. 1997; amd. Sec. 14, Ch. 111, L. 1999; amd. Sec. 18, Ch. 45, L. 2001; amd. Sec. 11, Ch. 90, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 90 in introduction substituted "savings account" for "savings fund". Amendment effective March 30, 2007.

19-20-604. (Temporary) State contributions — termination. The state shall contribute monthly from the general fund to the pension trust fund a sum equal to 0.11% of the compensation of members participating in the system on or after July 1, 1999. The contributions are statutorily appropriated, as provided in 17-7-502, to the pension trust fund. The state contribution provided for in this section terminates when the amortization period for the system's unfunded liability is 10 years or less according to the system's latest actuarial valuation. The board shall certify amounts due under this section on a monthly basis. The state treasurer shall transfer the certified amounts to the pension trust fund within 1 week. *(Terminates on occurrence of contingency—sec. 10, Ch. 360, L. 1999.)*

History: En. Sec. 2, Ch. 360, L. 1999.

Compiler's Comments

Contingent Termination: Section 10, Ch. 360, L. 1999, provided: "[Sections 2 and 3] [enacting 19-20-604 and amending 17-7-502] terminate when the amortization period for the system's unfunded liability is 10 years or less according to the system's latest actuarial valuation. The teachers' retirement board shall notify the governor and the code commissioner on occurrence of this contingency."

19-20-605. Pension accumulation account — employer's contribution. (1) The pension accumulation account is the account in which the reserves for payment of retirement allowances and benefits must be accumulated and from which retirement allowances and benefits must be paid to retirees or their beneficiaries. Contributions to and payments from the pension accumulation account must be made as provided in this section.

(2) Except as provided in subsection (3), for each member employed during the whole or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to:

- (a) beginning July 1, 2007, through June 30, 2009, 9.47% of total earned compensation; and
- (b) beginning July 1, 2009, 9.85% of total earned compensation.

(3) For each member employed by a school district or a community college during the whole or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to 7.47% of total earned compensation.

(4) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.

(5) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.

(6) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

(7) All interest and other earnings realized on the money of the retirement system must be credited to the pension accumulation account, and the amount required to allow regular interest on the annuity savings account must be transferred to that account from the pension accumulation account.

(8) The board may transfer from the pension accumulation account to the expense account an amount necessary to cover expenses of administration.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(4); amd. Sec. 2, Ch. 193, L. 1981; amd. Sec. 1, Ch. 251, L. 1981; amd. Sec. 9, Ch. 549, L. 1981; amd. Sec. 2, Ch. 527, L. 1983; amd. Sec. 3, Ch. 658, L. 1985; amd. Sec. 2, Ch. 204, L. 1989; amd. Sec. 2, Ch. 530, L. 1993; Sec. 19-4-605, MCA 1991; redes. 19-20-605 by Code Commissioner, 1993; amd. Sec. 14, Ch. 442, L. 1997; amd. Sec. 35, Ch. 532, L. 1997; amd. Sec. 12, Ch. 90, L. 2007; amd. Sec. 6, Ch. 305, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section — Code Commissioner Correction: Chapter 90 throughout section substituted references to accumulation account for references to accumulation fund; in (7) after “annuity savings” substituted “account” for “fund” and after “transferred to that” substituted “account” for “fund”; and in (8) after “expense” substituted “account” for “fund”. Amendment effective March 30, 2007.

Chapter 305 in (1) at end substituted “provided in this section” for “follows”; in (2) at beginning inserted exception clause and language concerning each member employed in preceding payroll period and at end deleted “7.47% of the earned compensation of each member employed during the whole or part of the preceding payroll period”; inserted (2)(a) and (2)(b) concerning employer payment for designated time periods; inserted (3) concerning employer payment for members employed by school district or community college; in (8) near beginning before “board” deleted “retirement”; and made minor changes in style. Amendment effective July 1, 2007.

In (3) the code commissioner substituted “account” for “fund” to reflect Ch. 90 amendments.

19-20-606. Repealed. Sec. 40, Ch. 532, L. 1997.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(5); amd. Sec. 2, Ch. 328, L. 1985; Sec. 19-4-606, MCA 1991; redes. 19-20-606 by Code Commissioner, 1993.

19-20-607. Supplemental state contribution. (1) Each month, the state shall contribute, as a supplemental contribution to the teachers' retirement system, from the general fund to the pension trust fund an amount equal to:

(a) beginning July 1, 2007, through June 30, 2009, 2% of the total earned compensation of school district and community college active members participating in the system; and

(b) beginning July 1, 2009, 2.38% of the total earned compensation of school district and community college active members participating in the system.

(2) The contributions are statutorily appropriated, as provided in 17-7-502, to the pension trust fund. The board shall determine and shall certify to the state treasurer amounts due under this section on a monthly basis. The state treasurer shall transfer the certified amounts to the pension trust fund within 1 week following receipt of the certification from the board.

History: En. Sec. 1, Ch. 305, L. 2007.

Compiler's Comments

Effective Date: Section 13(1), Ch. 305, L. 2007, provided that this section is effective July 1, 2007.

19-20-608 through 19-20-620 reserved.

19-20-621. Montana university system optional retirement program supplemental contributions. (1) Each employer within the university system with employees participating in the optional retirement program under Title 19, chapter 21, shall contribute to the teachers' retirement system a supplemental employer contribution sufficient to amortize, by July 1, 2033, the past service liability of the teachers' retirement system for the university system members.

(2) The optional retirement program supplemental employer contribution as a percentage of the total compensation of all employees participating in the program is:

(a) 4.04% beginning July 1, 2001, through June 30, 2007; and

(b) 4.72% beginning July 1, 2007.

(3) The board shall periodically review the supplemental employer contribution rate and recommend adjustments to the legislature as needed to maintain the amortization of the university system's past service liability by July 1, 2033.

History: En. Sec. 1, Ch. 419, L. 1997; amd. Sec. 7, Ch. 305, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 305 in (2) at end substituted “is” for “must increase to”; deleted former (2)(a) through (2)(d) that read: “(a) 2.81% beginning July 1, 1997;

(b) 3.12% beginning July 1, 1998;

(c) 3.42% beginning July 1, 1999;

(d) 3.73% beginning July 1, 2000”; in (2)(a) at end inserted “through June 30, 2007”; inserted (2)(b) concerning rate beginning July 1, 2007; and made minor changes in style. Amendment effective July 1, 2007.

19-20-622. Renumbered 19-20-720. Sec. 83, Ch. 7, L. 2001.

Part 7

Benefits in General

19-20-701. Benefits. The retirement, disability, and other benefits of the retirement system shall be granted on the basis of the provisions of this chapter.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(1); Sec. 19-4-701, MCA 1991; redes. 19-20-701 by Code Commissioner, 1993.

19-20-702. Optional allowances. (1) Until the first payment on account of any benefit becomes normally due, any member may elect to receive one of the optional allowances described in subsection (2) in lieu of the normal form of retirement allowance, which is provided for in 19-20-902 and part 8 of this chapter. If a member dies within 30 days after retirement, the member's election to receive an optional allowance is void and the member's death will be considered as that of an active member.

(2) An optional allowance is the actuarial equivalent of the member's service retirement or disability retirement allowance at the time of the member's retirement effective date and provides an allowance payable to the member throughout the member's lifetime and, upon the member's death, an allowance payable to the person that the member nominated by written designation, duly acknowledged and filed with the retirement board at the time of the member's retirement, in accordance with one of the following options:

(a) Option A—the optional allowance will be paid to the member throughout the member's lifetime and, upon the member's death, continue throughout the lifetime of the member's designated beneficiary.

(b) Option B—the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, one-half of the optional allowance will be continued throughout the lifetime of the member's designated beneficiary.

(c) Option C—the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, two-thirds of the optional allowance will be continued throughout the lifetime of the member's designated beneficiary.

(d) Period certain and life—a retirement allowance will be paid for a certain period of time or for the member's lifetime, whichever is greater.

(i) The member shall elect one of the following certain time periods:

(A) 10 years if the member is 75 years of age or younger at the time of retirement; or

(B) 20 years if the member is 65 years of age or younger at the time of retirement.

(ii) At the time of retirement, the member shall file with the board a written nomination of beneficiaries to receive payments if the member dies before the end of the certain period elected. Unless limited by a family law order, the nominated beneficiary may be changed by the member at any time by filing with the board a written notice designating different beneficiaries.

(3) (a) Upon written application to the retirement board, a retired member whose effective date of retirement is before October 1, 1993, and who is receiving an optional retirement allowance may designate a different beneficiary, select a different option, or convert the member's optional retirement allowance to a normal form of retirement allowance if:

(i) the original beneficiary has died. The benefit must convert to the normal form of retirement allowance effective the first of the month following the death of the designated beneficiary.

(ii) the member has been divorced from the original beneficiary and the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement. The benefit must convert to the normal form of retirement allowance effective the first of the month following receipt of a written application and verification that the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement or disability allowance to reflect the change.

(4) A retired member receiving an optional retirement allowance pursuant to subsection (2)(a), (2)(b), or (2)(c) that is effective after October 1, 1993, may file a written application to revert the optional retirement allowance to the full normal form of retirement allowance available at the time of retirement if:

(a) the original beneficiary has died. The benefit must revert to the full normal form of retirement allowance effective the first of the month following the death of the designated beneficiary.

(b) the member has been divorced from the original beneficiary and the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement. The benefit must revert to the full normal form of retirement allowance effective the first of the month following receipt of a written application and verification that the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(5) The normal form of retirement allowance available must be increased by the value of any postretirement adjustments received by the member since the effective date of retirement.

(6) The retired member shall file the written application required by subsection (3) or (4) with the board to designate a different beneficiary or to select an actuarially equivalent optional allowance, or both, within 18 months of the death or divorce of the designated beneficiary.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(8); amd. Sec. 1, Ch. 493, L. 1985; amd. Sec. 1, Ch. 9, L. 1993; Sec. 19-4-702, MCA 1991; redes. 19-20-702 by Code Commissioner, 1993; amd. Sec. 15, Ch. 442, L. 1997; amd. Sec. 15, Ch. 111, L. 1999.

19-20-703. Payments to be monthly. (1) All retirement allowances must be paid in equal monthly installments.

(2) The retirement allowance may commence:

(a) no earlier than the first day of the month following the member's termination date or on the first day of the month following the date when the member first becomes eligible, whichever date is later; or

(b) if requested by the inactive member in writing:

(i) on the first day of a later month; or

(ii) on the first day of the month following the member's 60th birthday.

(3) Distribution of a member's benefit must begin by the later of the April 1 following the calendar year in which a member attains age 70 ½ or April 1 of the year following the calendar year in which the member terminates. If a member fails to apply for retirement benefits by the later of either of those dates, the board shall begin distribution of the monthly benefit as provided in 19-20-702(2)(d)(i)(A).

(4) The life expectancy of a member or the member's beneficiary may not be recalculated after benefits commence.

History: En. 75-6201 by Sec. 96, Ch. 5, L. 1971; amd. Sec. 21, Ch. 326, L. 1974; amd. Sec. 1, Ch. 26, L. 1975; amd. Sec. 1, Ch. 127, L. 1977; amd. Sec. 1, Ch. 331, L. 1977; R.C.M. 1947, 75-6201(part); Sec. 19-4-703, MCA 1991; redes. 19-20-703 by Code Commissioner, 1993; amd. Sec. 16, Ch. 442, L. 1997; amd. Sec. 16, Ch. 111, L. 1999.

19-20-705. Correction of errors. (1) If a change or error in the records results in a member or beneficiary receiving from the retirement system more or less than the member or beneficiary would have been entitled to receive had the records been correct, then, on discovery of the error, the retirement board shall correct the error and, as far as practicable, shall adjust the payments so that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled will be paid.

(2) If the amount of a contribution payment is incorrect, the board may reject the payment or accept the payment and approve an arrangement to collect the correct amount, including any or all of the following arrangements:

(a) adjustment of subsequent payments to the board from a member or an employer;

(b) collection of installment payments or a lump-sum payment from an employer; or

(c) collection of installment payments, a lump-sum payment, or a rollover payment from a member.

(3) Upon discovery of a forged signature on a retirement benefit application, the benefit must be corrected as provided in subsection (1).

(4) Interest accrues on contributions not reported or amounts overpaid to members at the actuarially assumed rate. Interest accrues from the date the contributions were due or the date the benefits were paid in error. If the board finds that the error was caused by the teachers' retirement system, interest must be waived.

History: En. 75-6217 by Sec. 112, Ch. 5, L. 1971; amd. Sec. 12, Ch. 127, L. 1977; R.C.M. 1947, 75-6217(2); Sec. 19-4-705, MCA 1991; redes. 19-20-705 by Code Commissioner, 1993; amd. Sec. 19, Ch. 45, L. 2001; amd. Sec. 7, Ch. 174, L. 2003; amd. Sec. 13, Ch. 90, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 90 inserted (4) regarding accrual of interest. Amendment effective March 30, 2007.

19-20-706. Exemption from taxation and legal process. Except as provided in 19-20-305 and 19-20-306, the retirement allowances or any other benefits accrued or accruing to any person under the provisions of the retirement system and the accumulated contributions and cash and securities in the various funds of the retirement system are:

- (1) exempted from any state, county, or municipal tax of the state of Montana except for:
 - (a) a retirement allowance received in excess of \$3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or
 - (b) a withdrawal paid under 19-20-603 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-20-602;
- (2) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity, or any other process; and
- (3) unassignable except as specifically provided in this chapter.

History: En. 75-6215 by Sec. 110, Ch. 5, L. 1971; R.C.M. 1947, 75-6215; amd. Sec. 8, Ch. 464, L. 1985; amd. Sec. 25, Ch. 83, L. 1989; amd. Sec. 7, Ch. 823, L. 1991; amd. Sec. 3, Ch. 259, L. 1993; Sec. 19-4-706, MCA 1991; redes. 19-20-706 by Code Commissioner, 1993; amd. Sec. 6, Ch. 111, L. 1995; amd. Sec. 17, Ch. 442, L. 1997; amd. Sec. 19, Ch. 552, L. 1997.

19-20-710. Maximum benefit limitation. A monthly benefit paid under the retirement system provided for in this chapter may not exceed the annual limits on benefits as specified in section 415 of the Internal Revenue Code as adjusted for cost-of-living increases for calendar years 1988 and succeeding years. However, benefits in excess of those limits may be paid from a qualified governmental excess benefit arrangement subject to 19-20-212.

History: En. Sec. 1, Ch. 14, L. 1987; Sec. 19-4-710, MCA 1991; redes. 19-20-710 by Code Commissioner, 1993; amd. Sec. 17, Ch. 111, L. 1999; amd. Sec. 8, Ch. 174, L. 2003.

19-20-715. Compensation limit. (1) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as adjusted for cost-of-living increases must be disregarded for individuals who are not eligible employees. The limitation on compensation for eligible employees may not be less than the amount that was allowed to be taken into account under this chapter on July 1, 1993. For purposes of this section, an eligible employee is an individual who was a member in the retirement system prior to July 1, 1996. Any changes in the maximum limits under section 401(a)(17) of the Internal Revenue Code must be applied prospectively.

(2) In determining a member's retirement allowance under 19-20-802 or 19-20-804, the compensation reported in each year of the 3 years that make up the average final compensation may not be greater than 110% of the previous year's compensation included in the calculation of average final compensation or the earned compensation reported to the retirement system, whichever is less, except as provided by rule by the retirement board.

(3) Earned compensation in excess of the amount specified in subsection (2) is considered termination pay and must be included in the calculation of average final compensation as provided in 19-20-716.

History: En. Sec. 8, Ch. 111, L. 1995; amd. Sec. 21, Ch. 442, L. 1997; amd. Sec. 9, Ch. 174, L. 2003.

19-20-716. Termination pay. (1) If a member terminates and receives termination pay at the time of retirement, the member shall select, subject to subsections (5) and (6), by signing a binding, irrevocable written election at least 90 days before the member's termination date, one of the following options:

(a) Option 1—The member may use the total termination pay in the calculation of the member's average final compensation. The member and the employer shall pay contributions to the retirement system as determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time of termination.

(b) Option 2—The member may use a yearly amount of the total termination pay added to each of the 3 consecutive years' salary used in the calculation of the member's average final compensation. To determine the amount of termination pay used in the calculation of average final compensation, termination pay must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602 and 19-20-605(1). For the

purposes of this subsection (1)(b), the employer shall also pay as a contribution an amount equal to the termination pay multiplied by the rate established in 19-20-607 that would have been payable by the state as a supplemental contribution. The contributions must be made at the time of termination.

(c) Option 3—The member may exclude the termination pay from the average final compensation. A contribution is not required of either the member or the employer.

(2) A binding, irrevocable written election required by this section must be signed by both the member and the employer at least 90 days prior to the member's termination date and must contain statements with regard to the contributions required to be made by the member under subsections (1)(a) and (1)(b) that:

(a) the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the system in lieu of contributions by the member and that the picked up contributions are paid from the same source as compensation is paid;

(b) the member may not choose to directly receive the amounts deducted from the member's termination pay instead of having them paid by the employer to the system;

(c) the member may not prepay any portion of the contributions; and

(d) the effective date of the pickup is the date that the irrevocable written election is signed by both the member and employer. The effective date must be at least 90 days prior to the date of the member's termination. The pickup does not apply to a contribution made before the effective date of the pickup.

(3) For the purpose of this section, the date of termination is the last day the member is performing any services covered under this chapter.

(4) Pursuant to subsection (2), contributions required under subsection (1)(a) or (1)(b) must be:

(a) deducted from the portion of termination pay that:

(i) constitutes wages for the purposes of section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) can be included in the member's gross income for federal tax purposes; and

(b) picked up by the employer, except as provided in subsections (5) and (6).

(5) A member's contributions greater than the total amount of the member's termination pay may not be picked up by the employer and are subject to the limitations of section 415 of the Internal Revenue Code.

(6) If a member and the member's employer fail to sign the written election within the time period required in subsection (1), the member may contribute for the purposes specified in subsections (1)(a) and (1)(b) on all or any part of the termination pay received. A contribution made pursuant to this subsection may not be picked up by the employer and is subject to the limitations of section 415 of the Internal Revenue Code.

History: En. Sec. 2, Ch. 442, L. 1997; amd. Sec. 18, Ch. 111, L. 1999; amd. Sec. 20, Ch. 45, L. 2001; amd. Sec. 10, Ch. 320, L. 2005; amd. Sec. 14, Ch. 90, L. 2007; amd. Sec. 8, Ch. 305, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 90 inserted (3) regarding date of termination; and made minor changes in style. Amendment effective March 30, 2007.

Chapter 305 in (1)(b) inserted fourth sentence concerning contribution amount equal to termination pay multiplied by rate in 19-20-607. Amendment effective July 1, 2007.

19-20-717. Effect of no designation or no surviving beneficiary. (1) If a beneficiary is not designated or if no designated beneficiary survives the payment recipient, the estate of the payment recipient is the beneficiary and is entitled to any lump-sum payment or retirement benefit accrued but not received prior to the death of the payment recipient. If the estate would not be probated but for the amount due from the retirement system, all of the amount due must be paid directly, without probate, to the surviving next of kin of the deceased or to the personal representative or executor of the survivor's estate.

(2) Payment must be made in the same order in which the following groups are listed:

(a) husband or wife;

(b) children;

(c) father and mother;

(d) grandchildren;

- (e) brothers and sisters; or
- (f) nieces and nephews.

(3) A payment may not be made to a person included in any of the groups listed in subsection (2) if at the date of payment there is a living person in any of the groups preceding the group of which the person is a member, as listed. Payment must be made upon receipt from the person of an affidavit, upon a form supplied by the system, that there are no living individuals in the groups preceding the group of which the person is a member and that the estate of the deceased will not be probated.

(4) The payment must be in full and complete discharge and acquittance of the board and system on account of the member's or payment recipient's death.

History: En. Sec. 4, Ch. 442, L. 1997; amd. Sec. 15, Ch. 90, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 90 in (1) in second sentence substituted "personal representative or executor" for "guardians" and at end after "estate" deleted "share and share alike"; and made minor changes in style. Amendment effective March 30, 2007.

19-20-718. Maximum contribution limitation. (1) Notwithstanding any other provision of law to the contrary, the board may modify a request by a participant to make a contribution to the system required under part 4 or 6 of this chapter that would exceed the limits in section 415(c) or 415(n) of the Internal Revenue Code by using the following methods:

(a) The board may establish a periodic payment plan in order to avoid a contribution in excess of the limits of section 415(c) or 415(n) of the Internal Revenue Code.

(b) If the board's option in subsection (1)(a) will not avoid a contribution in excess of the limits in section 415(c) of the Internal Revenue Code, the board may direct the excess contribution to the qualified governmental excess benefit arrangement pursuant to section 415(m) of the Internal Revenue Code if a qualified governmental excess benefit arrangement has been established pursuant to 19-20-212.

(2) If the board's options in subsections (1)(a) and (1)(b) will not avoid a contribution in excess of the limits of section 415(c) of the Internal Revenue Code, the board shall reduce or refuse the contribution.

(3) The board shall use the provisions of section 415(n) of the Internal Revenue Code, as the provisions apply to a government plan, to facilitate member's service purchases. An eligible participant in a retirement plan, as defined by section 1526 of the Taxpayer Relief Act of 1997, 26 U.S.C. 415, may purchase service credit without regard to the limitations of section 415(c)(1) of the Internal Revenue Code under the Montana statutes in effect on August 5, 1997.

(4) For the purpose of calculating the maximum contribution under section 415 of the Internal Revenue Code, the definitions of "compensation", "wages", and "salary" include the amount of any elective deferral, as defined in section 402(g) of the Internal Revenue Code, or any contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member by reason of section 125, 132(f), 403(b), or 457 of the Internal Revenue Code. Any changes in the maximum limits under section 415 of the Internal Revenue Code must be applied prospectively.

History: En. Sec. 19, Ch. 111, L. 1999; amd. Sec. 10, Ch. 174, L. 2003; amd. Sec. 11, Ch. 320, L. 2005.

19-20-719. Guaranteed annual benefit adjustment — rulemaking. (1) On January 1 of each year, the retirement allowance payable to each recipient who is eligible under subsection (2) must be increased by 1.5%.

(2) A benefit recipient is eligible for and must receive the annual benefit adjustment provided for in this section if the retiree has received at least 36 monthly retirement benefit payments prior to January 1 of the year in which the adjustment is to be made.

History: En. Sec. 1, Ch. 360, L. 1999; amd. Sec. 20, Ch. 149, L. 2001; amd. Sec. 11, Ch. 174, L. 2003; amd. Sec. 9, Ch. 285, L. 2007; amd. Sec. 9, Ch. 305, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 285 in (3) after "On" deleted "January 1, 2002, and" and after "system's" deleted "biennial"; and in (3)(a) in two places after "recent" deleted "biennial". Amendment effective June 1, 2007. The amendments by Ch. 305 rendered the amendments by Ch. 285 void.

Chapter 305 in (1) at beginning deleted "Subject to subsection (3)"; in (2) before "annual" deleted "minimum"; deleted former (3) and (4) that read: "(3) On January 1, 2002, and January 1 of each year following the system's

biennial valuation, the board may increase the annual benefit adjustment provided in subsection (1) until a maximum of 3% is guaranteed if:

- (a) the period required to amortize the system's actuarial unfunded liability, as determined by the most recent biennial valuation, adjusted for any benefit enhancement enacted by the legislature since the most recent biennial valuation, is less than 25 years;
 - (b) sufficient funds are available to increase the guaranteed annual benefit adjustment by at least 0.1%; and
 - (c) the increase granted by the board would not cause the amortization period, as of the most recent valuation, to exceed 25 years.
- (4) The board shall adopt rules to administer the provisions of this section"; and made minor changes in style. Amendment effective July 1, 2007.

19-20-720. Minimum monthly benefit allowance. (1) A retired member of the retirement system who on July 1, 2001, is receiving a service or disability retirement allowance that is less than \$600 is eligible to receive a minimum monthly benefit allowance of \$600 if the member at the time of retirement had 25 years or more of creditable service.

(2) A beneficiary or beneficiaries of a deceased retired member who on July 1, 2001, are receiving an optional service, disability, or survivorship allowance that when added together are less than \$600 are eligible to receive a proportional share of a minimum monthly benefit allowance of \$600 if the retired member at the time of retirement had 25 years or more of creditable service.

(3) If on July 1, 2001, multiple beneficiaries are receiving benefits under a retired member's account, the minimum monthly benefit must be divided in the same proportion as was the initial service, disability, or survivorship allowance.

History: En. Sec. 5, Ch. 360, L. 1999; amd. Sec. 19, Ch. 149, L. 2001; Sec. 19-20-622, MCA 1999; reded. 19-20-720 by Sec. 83, Ch. 7, L. 2001.

19-20-721. Designation of beneficiary. (1) Each member or recipient of a benefit shall file with the board a written application nominating a beneficiary who may be eligible to receive the benefit provided pursuant to this chapter. The board shall provide a form that may be used for this purpose. A member or benefit recipient may revoke the application and nominate a different beneficiary by filing a new form for this purpose with the board.

(2) A beneficiary who renounces an interest in the right to a payment of a benefit will be considered, for the purposes of further payment by the board of a renounced interest, to have predeceased the member or beneficiary.

History: En. Sec. 21, Ch. 45, L. 2001.

19-20-722 through 19-20-730 reserved.

19-20-731. Postretirement employment limitations — cancellation and recalculation of benefits. (1) (a) Except as otherwise provided in this section, a retired member may be employed part-time by a school district, state agency, or unit of the university system in a position eligible to participate in the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

- (i) one-third of the sum of the member's average final compensation; or
- (ii) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(b) For the purposes of this subsection (1), the maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all remuneration paid to the retired member, excluding:

- (i) the amount of health insurance premiums paid by the employer on the retired member's behalf;
- (ii) the value of housing provided by the employer to the retired member;
- (iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;
- (iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and
- (v) payroll taxes paid by the employer on behalf of the retired member.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(3) Except as provided in subsection (5), the retirement benefit of a retired member:

(a) employed in a part-time position or earning more than allowed by subsections (1) and (2) must be temporarily reduced by \$1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be canceled if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

(b) employed in a full-time position must be canceled beginning in the month in which the retired member returns to full-time employment.

(4) Upon termination and retirement subsequent to a cancellation of benefits pursuant to subsection (3), the retirement benefit of a member:

(a) who was reemployed and earned less than 1 year of creditable service must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later. The reinstated retirement benefit is the amount and option that the retired member would have been entitled to receive had the retired member not returned to employment.

(b) who was reemployed and earned at least 1 year of creditable service must be recalculated under 19-20-804 if the member has attained normal retirement age or under 19-20-802 if the member has not attained normal retirement age but is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated normal form benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were canceled.

(5) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled.

(6) For purposes of this section, "position eligible to participate in the retirement system" includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor, as those terms are defined in 39-8-102.

(7) The retirement allowance of any retired member who is employed in a position and who elects to participate in the optional retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the optional retirement program.

History: En. Sec. 14, Ch. 320, L. 2005; amd. Sec. 16, Ch. 90, L. 2007; amd. Sec. 10, Ch. 305, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 90 inserted (6) defining position eligible to participate in the retirement system; inserted (7) regarding suspension of retirement allowance; and made minor changes in style. Amendment effective March 30, 2007.

Chapter 305 inserted (1)(b) concerning maximum compensation and items excluded from remuneration; and made minor changes in style. Amendment effective July 1, 2007.

Part 8

Superannuation Retirement

19-20-801. Eligibility for service retirement. A member who has at least 5 full years of creditable service and who has attained the age of 60 or has been credited with full-time or part-time creditable service in 25 or more years may retire from service if the member has terminated employment in all positions from which the member is eligible to retire and files with the retirement board a written application.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(2)(a); amd. Sec. 3, Ch. 527, L. 1983; Sec. 19-4-801, MCA

1991; redes. 19-20-801 by Code Commissioner, 1993; amd. Sec. 22, Ch. 442, L. 1997; amd. Sec. 20, Ch. 111, L. 1999.

19-20-802. Early retirement. (1) A member who is not eligible for service retirement but who has at least 5 years of creditable service and who has attained the age of 50 may retire from service and be eligible for an early retirement allowance if the member files with the retirement board the member's written application.

(2) The early retirement allowance must be determined as prescribed in 19-20-804 and section 5, Chapter 549, Laws of 1981, with the exception that the allowance will be reduced as follows:

(a) by $\frac{1}{2}$ of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 25 years of creditable service; and

(b) by $\frac{3}{10}$ of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which the member would have retired had the member attained 60 years of age or had the member completed 25 years of creditable service.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(3)(d); amd. Sec. 1, Ch. 396, L. 1981; amd. Sec. 7, Ch. 549, L. 1981; amd. Sec. 4, Ch. 527, L. 1983; Sec. 19-4-802, MCA 1991; redes. 19-20-802 by Code Commissioner, 1993; amd. Sec. 21, Ch. 111, L. 1999; amd. Sec. 12, Ch. 320, L. 2005.

19-20-803 reserved.

19-20-804. Allowance for service retirement. Upon termination, a member who has attained normal retirement age must receive a retirement allowance equal to one-sixtieth of the member's average final compensation, as limited by 19-20-715, multiplied by the sum of the number of years of creditable service and service transferred under 19-20-409.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(2)(d), (3)(a), (3)(b); amd. Sec. 6, Ch. 549, L. 1981; amd. Sec. 1, Ch. 443, L. 1983; amd. Sec. 8, Ch. 113, L. 1989; Sec. 19-4-804, MCA 1991; redes. 19-20-804 by Code Commissioner, 1993; amd. Sec. 23, Ch. 442, L. 1997; amd. Sec. 22, Ch. 111, L. 1999; amd. Sec. 22, Ch. 45, L. 2001; amd. Sec. 2, Ch. 120, L. 2003; amd. Sec. 4, Ch. 402, L. 2003; amd. Sec. 13, Ch. 320, L. 2005.

19-20-805. Earned compensation — part-time service. (1) The earned compensation of a member who retired under 19-20-802 or 19-20-804 and had less than 3 consecutive years of full-time service during the 5 years immediately preceding the member's termination is the compensation that the member would have earned in the 3 years used to calculate average final compensation had the member's part-time service been full-time service. To determine the compensation that the member would have earned, the compensation reported must be divided by the part-time service credited to the member's account.

(2) (a) Subject to subsection (2)(b), if a member has transferred service from the public employees' retirement system as provided under 19-20-409 and does not have 3 consecutive years of full-time service reported to the teachers' retirement system, the member's average final compensation may be calculated as follows:

(i) if the member's part-time service credit in the public employees' retirement system plus the member's part-time service credit in the teachers' retirement system equals 1 year in any of the fiscal years used in determining average final compensation, then the member's annual salary for that fiscal year must be the member's salary as a member of the public employees' retirement system plus the member's salary as a member of the teachers' retirement system; or

(ii) if the member's part-time service credit in the public employees' retirement system plus the member's part-time service credit in the teachers' retirement system equals less than 1 year in any of the fiscal years used to determine average final compensation, then the member's part-time salary as a member of the public employees' retirement system plus the member's part-time salary as a member of the teachers' retirement system must be divided by the sum of the member's part-time teachers' retirement system service credit and the member's part-time public employees' retirement system service credit.

(b) Compensation reported to the public employees' retirement system used to calculate average final compensation must be adjusted to exclude any compensation that would be considered termination pay under this chapter.

History: En. Sec. 1, Ch. 442, L. 1997; amd. Sec. 12, Ch. 174, L. 2003; amd. Sec. 17, Ch. 90, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 90 in (2)(a)(ii) at end deleted "divided by the member's part-time teachers' retirement system service credit". Amendment effective March 30, 2007.

19-20-806. Terminated. Sec. 6, Ch. 120, L. 2003.

History: En. Sec. 1, Ch. 120, L. 2003; amd. Sec. 15, Ch. 320, L. 2005.

Part 9 Disability Retirement

19-20-901. Eligibility for disability retirement — determination by board. (1) Upon the application of a member or of the member's employer for a disability retirement allowance, any member who has 5 or more years of creditable service and who has become disabled while being an active member may be retired by the retirement board the month immediately following the month in which employment is terminated. In order for a member to be eligible for disability retirement, the retirement board or its representative shall certify that the member is mentally or physically incapacitated for the further performance of the member's duties, that the incapacity is likely to be permanent, and that the member should be retired. The board's representative shall report to the board the representative's findings and any action taken by the representative, and the action must be presented to the board for approval by the board.

(2) In making a determination under subsection (1), the retirement board or its representative may:

- (a) order examinations by a physician, psychologist, or vocational rehabilitation counselor;
- (b) conduct hearings, administer oaths and affirmations, take depositions, and certify to official acts; and
- (c) issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memorandums, and other records considered necessary as evidence in connection with a claim for disability retirement. The subpoenas issued under this subsection (2)(c) are enforceable as provided in 2-4-104.

(3) The retirement board may secure and pay reasonable compensation for professional services and advice that the board determines necessary to carry out the purposes of this part.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(a); amd. Sec. 3, Ch. 8, L. 1991; amd. Sec. 2, Ch. 226, L. 1993; Sec. 19-4-901, MCA 1991; redes. 19-20-901 by Code Commissioner, 1993; amd. Sec. 23, Ch. 111, L. 1999.

19-20-902. Allowance for disability retirement. (1) Upon retirement for disability, a member must receive a disability retirement allowance equal to the greater of:

- (a) one-sixtieth of the member's average final compensation multiplied by the sum of the number of years of creditable service, including service transferred under 19-20-409; or
- (b) one-fourth of the member's average final compensation.

(2) The earned compensation in the year of termination that is included in the calculation of average final compensation of a member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary that the member would have received under the member's contract had the member completed the full year. Any termination pay received by the member is limited to the amount actually paid and is not the amount that the member would have earned had the member completed the full year.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(5)(a) thru (5)(c); amd. Sec. 61, Ch. 370, L. 1987; amd. Sec. 9, Ch. 113, L. 1989; amd. Sec. 3, Ch. 226, L. 1993; Sec. 19-4-902, MCA 1991; redes. 19-20-902 by Code Commissioner, 1993; amd. Sec. 24, Ch. 442, L. 1997; amd. Sec. 24, Ch. 111, L. 1999.

19-20-903. Medical examination of disability retiree. (1) Once each year during the first 5 years following the retirement of a member on a disability retirement allowance and once in every 3-year period thereafter, the retirement board may require a disability benefit recipient who has not yet attained the age of 60 to undergo a medical examination by a physician or

physicians designated by the retirement board. The examination must be made at the place of residence of the benefit recipient or other place mutually agreed upon. Based on the examination, the board shall determine whether the disabled member is unable, by reason of physical or mental incapacity, to perform the essential elements of the position held by the member when the member retired. If the board determines that the member is not incapacitated, the member's retirement benefit must be canceled. If the member disagrees with the board's determination, the member may request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after the receipt of the notice of the status change.

(2) A member whose disability retirement benefit is canceled because the board has determined that the member is no longer incapacitated must be given preference by the member's former employer for the position held at the time of retirement or for a comparable position that becomes available within 1 year of cancellation of the disability retirement. The member may agree to accept an offer of employment by an employer. Employment in any capacity by an employer terminates any right granted by this section. The fact that the former employee was retired on disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have. This section does not affect any requirement for the former employee to meet or to be able to meet professional certification and licensing standards unrelated to the previous disability, otherwise necessary for reinstatement to duty.

(3) If a disability benefit recipient who has not yet attained the age of 60 refuses to submit to a medical examination as required in subsection (1), the recipient's allowance may be discontinued until withdrawal of the refusal. If a refusal continues for 1 year, all rights in and to a disability pension may be revoked by the retirement board.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(b); amd. Sec. 2, Ch. 24, L. 1987; Sec. 19-4-903, MCA 1991; redes. 19-20-903 by Code Commissioner, 1993; amd. Sec. 25, Ch. 442, L. 1997.

19-20-904. Adjustment of allowance. (1) (a) Except as provided by subsection (1)(b), if a retiree receiving a disability retirement allowance is engaged in or is able to engage in a gainful occupation paying more than the difference between the retiree's retirement allowance and the retiree's average final compensation or the difference between the median salary of those members retired during the preceding fiscal year and the retiree's retirement allowance, whichever is greater, the retirement allowance must be reduced to an amount that, together with the amount earnable by the retiree, is equal to the retiree's average final compensation or the median salary of those members retired during the preceding fiscal year, whichever is greater.

(b) If a disabled retiree is reemployed with the same employer within 30 days from the member's effective date of retirement or if the retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement benefit must be terminated.

(2) If the disabled retiree's earning capacity is changed later, the retirement allowance may be further modified, but the new allowance may not exceed the retirement allowance originally granted or an amount that, when added to the amount earnable by the retiree, equals the retiree's average final compensation.

(3) The board may, in its discretion, require a recipient of a disability retirement allowance to annually submit an earning statement and any documentation necessary to support the earnings of the recipient.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(c); amd. Sec. 1, Ch. 197, L. 1983; amd. Sec. 3, Ch. 24, L. 1987; Sec. 19-4-904, MCA 1991; redes. 19-20-904 by Code Commissioner, 1993; amd. Sec. 7, Ch. 111, L. 1995; amd. Sec. 26, Ch. 442, L. 1997.

19-20-905. Cancellation of allowance and restoration of membership. (1) If a disabled retiree is employed full-time in a capacity that would otherwise meet the eligibility

requirements of active membership, as provided under 19-20-302, the retiree's retirement allowance must cease. If the retiree is employed full-time by an employer covered under this chapter, the retiree shall again become an active member of the retirement system. Any prior service certificate on the basis of which the member's service was computed at the time of the member's disability retirement must be restored to full force, and upon the member's subsequent retirement, the member must be credited with the prior service and all subsequent service as a member.

(2) If the member is restored to active membership on or after the attainment of the age of 55 years, the member's retirement allowance upon subsequent retirement may not exceed the retirement allowance that the member would have received had the member remained in service during the period of the member's previous retirement or the sum of the retirement allowance that the member was receiving immediately prior to the member's last restoration to service and the retirement allowance that the member would have received on account of the member's service since the member's last restoration had the member entered service at that time as a new member.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(d); Sec. 19-4-905, MCA 1991; redes. 19-20-905 by Code Commissioner, 1993; amd. Sec. 27, Ch. 442, L. 1997; amd. Sec. 13, Ch. 174, L. 2003.

Part 10 Death Benefits

19-20-1001. Allowances for death of member. (1) If a member dies before retirement, the member's accumulated contributions must be paid to the member's estate or to the beneficiary that the member nominated by a written application in a manner prescribed by the board and filed with the retirement board prior to the member's death.

(2) (a) In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason of service for a retirement benefit, the nominated beneficiary may elect to receive a retirement allowance. The retirement allowance must be determined as prescribed in 19-20-804 and section 5, Chapter 549, Laws of 1981, in the same manner as if the member elected option A provided for in 19-20-702(2)(a).

(b) The effective date of the retirement allowance provided for in subsection (2)(a) is the earlier of:

(i) the first of the month following the date of death; or

(ii) the effective date of the member's retirement, as acknowledged in writing by the retirement system before the member's death.

(c) In the event that payments made to the beneficiary do not equal the amount of the member's accumulated contributions before the member's death, the difference between the total retirement allowance payments made and the amount of the accumulated contributions at the time of the member's death must be paid to the beneficiary's estate.

(3) If the deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year before the member's death, a lump-sum death benefit of \$500 is payable to the member's designated beneficiary.

(4) If a deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to the member's death, the sum of \$200 a month must be paid to each minor child of the deceased member until the child reaches 18 years of age.

(5) If the member nominated more than one beneficiary to receive payment of a benefit provided by this section upon the member's death, then:

(a) each beneficiary is entitled to share in that benefit; and

(b) if a beneficiary predeceases the member, the benefit must be divided among the surviving beneficiaries.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(part); amd. Sec. 8, Ch. 549, L. 1981; amd. Sec. 4, Ch. 56, L. 1989; Sec. 19-4-1001, MCA 1991; redes. 19-20-1001 by Code Commissioner, 1993; amd. Sec. 28, Ch. 442, L. 1997; amd. Sec. 23, Ch. 45, L. 2001; amd. Sec. 16, Ch. 320, L. 2005.

19-20-1002. Payments upon death of retiree. (1) In the event of the death of a member after retirement, a death benefit of \$500 is payable to the designated beneficiary.

(2) In the event that payments made to a benefit recipient do not equal the amount of the member's accumulated contributions before the member's retirement, the difference between the total retirement allowance paid and the amount of the accumulated contributions must be paid to the beneficiary.

(3) If a deceased member had 5 or more years of creditable service and was retired at the time of death, the sum of \$200 a month must be paid to each minor child of the deceased retiree until the child reaches 18 years of age.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(part); amd. Sec. 5, Ch. 56, L. 1989; Sec. 19-4-1002, MCA 1991; redes. 19-20-1002 by Code Commissioner, 1993; amd. Sec. 29, Ch. 442, L. 1997.

19-20-1003. Payment of death benefits. (1) Death benefits paid from the system are subject to the requirements of this section.

(2) Death benefits must be distributed in accordance with section 401(a)(9) of the Internal Revenue Code and the regulations adopted under that section.

(3) The amount of benefits payable to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirements of the Internal Revenue Code.

(4) If the member dies before retirement benefits commence and a benefit is payable pursuant to 19-20-1001, distributions to the member's beneficiaries must begin as soon as administratively feasible and must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died. If the beneficiary has not elected the form of payment by the date on which the beneficiary is to receive the benefit and the beneficiary is eligible for a monthly benefit, the benefit must be paid as provided in 19-20-702(2)(d)(i)(A) or a lump sum must be paid if that is the only benefit due the beneficiary.

History: En. Sec. 25, Ch. 111, L. 1999.

Part 11

Group Insurance

19-20-1101. Withholding of group insurance premium from retirement allowance. (1) A retired member who is a participant in an approved employer-sponsored group insurance plan may elect to have the monthly premium for the group insurance withheld from the member's retirement allowance by the retirement system. Premiums withheld may be paid directly to the insurance carrier or employer of record at the time of retirement.

(2) Upon the death of a retired member, the beneficiary, if eligible, may elect to continue to have the monthly insurance premium withheld from a monthly retirement benefit and paid directly to the employer or the employer's insurance carrier.

(3) Each month, using the retirement system's online employer reporting system, the employer shall verify that all authorized insurance deductions are correct and notify the retired member of any changes.

History: En. Sec. 1, Ch. 20, L. 1987; Sec. 19-4-1101, MCA 1991; redes. 19-20-1101 by Code Commissioner, 1993; amd. Sec. 14, Ch. 174, L. 2003; amd. Sec. 18, Ch. 90, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 90 in (1) near beginning of first sentence inserted "approved" and in second sentence at beginning inserted "Premiums withheld may be"; inserted (3) requiring employer verification of insurance deductions; and made minor changes in style. Amendment effective March 30, 2007.

CHAPTER 50

DEFERRED COMPENSATION

Part 1

General Provisions

19-50-101. Definitions. For the purposes of this chapter, unless a different meaning is plainly implied by the context, the following definitions apply:

(1) “Administrator” or “board” means the public employees’ retirement board created in 2-15-1009 or an appropriate officer of a political subdivision.

(2) “Deferred compensation” means that income which an employee may legally defer in a deferred compensation plan established under this chapter pursuant to the rulings of the internal revenue service and which, while invested, is exempt from state and federal income tax on the employee’s contribution and on the interest, dividends, and capital gains until ultimately distributed to the employee.

(3) “Eligible deferred compensation plan” means a plan meeting the requirements of section 457 of the Internal Revenue Code.

(4) “Employee” means any person, including independent contractors and elected officials, receiving compensation from the state or a political subdivision for performing services.

(5) “Fund” means the state deferred compensation investment account.

(6) “Participant” means an employee enrolled in the plan.

(7) “Political subdivision” means any city, town, county, or other political subdivision of the state of Montana.

History: En. 68-2704 by Sec. 4, Ch. 264, L. 1974; R.C.M. 1947, 68-2704; amd. Sec. 1, Ch. 472, L. 1981; Sec. 19-2-101, MCA 1991; redes. 19-50-101 by Code Commissioner, 1993; amd. Sec. 67, Ch. 471, L. 1999.

19-50-102. Deferred compensation programs permitted — rules. (1) The state or a political subdivision may establish deferred compensation plans that are eligible under section 457 of the Internal Revenue Code, 26 U.S.C. 457, as amended, and in compliance with regulations of the U.S. department of the treasury. Eligible deferred compensation plans for employees may be established in addition to any retirement, pension, or other benefit plan administered by the state or a political subdivision.

(2) An employee may enter into a written agreement with the state or a political subdivision to defer a part of the employee’s compensation to one or more of the investment options provided in subsection (4) for the purpose of investment as provided by this chapter. The total amount deferred may not exceed the employee’s annual salary and may not exceed the amounts permitted under applicable sections of the Internal Revenue Code.

(3) Compensation deferred pursuant to this chapter is included as compensation for the purpose of computing retirement or pension benefits.

(4) The board or an appropriate officer of a political subdivision shall from time to time select the type of investment options and the financial institutions or entities in which state or political subdivision employee deferred compensation plan funds may be invested. The board or an appropriate officer of a political subdivision shall notify affected plan members of potential changes in investment options and financial institutions before the changes are made. The investment options and entities may include:

(a) a state deferred compensation investment fund established pursuant to Title 17 for the purpose of administering a state-invested deferred compensation plan. All contributions made by participants in the state deferred compensation investment fund and all interest or increase in the fund must be credited to the fund. These state-invested funds may be commingled with other state investment funds, but separate accounting must be maintained. The assets of the fund must be maintained for the benefit of participants and may not be diverted except for paying the reasonable expenses for administering the state deferred compensation investment fund.

(b) savings accounts in federally insured financial institutions;

(c) life insurance contracts and fixed annuity and variable annuity contracts from companies that are licensed to do business in the state and subject to regulation by the insurance commissioner;

(d) investment funds managed pursuant to investment services contracts maintained by the board or an appropriate officer of a political subdivision with investment managers registered with the United States securities and exchange commission, unless exempt from the commission’s regulation;

(e) mutual funds provided through contracts maintained by the board or an appropriate officer of a political subdivision with mutual fund companies regulated by the United States securities and exchange commission, unless exempt from the commission’s regulation; or

(f) a combination of the items in subsections (4)(a) through (4)(e).

(5) The deferred compensation plan funds invested pursuant to this section and the income from those funds must be held in a trust, custodial account, or insurance contract for the exclusive benefit of participants and their beneficiaries.

(6) The administrator may allocate any necessary costs against the assets and interest earnings accumulated in funds, accounts, or contracts established under this chapter.

(7) The board or appropriate officer of a political subdivision shall promulgate rules not inconsistent with this chapter for the proper administration of deferred compensation plans established under this chapter.

History: En. 68-2701 by Sec. 1, Ch. 264, L. 1974; amd. Sec. 1, Ch. 60, L. 1977; R.C.M. 1947, 68-2701; amd. Sec. 2, Ch. 472, L. 1981; Sec. 19-2-102, MCA 1991; redes. 19-50-102 by Code Commissioner, 1993; amd. Sec. 1, Ch. 37, L. 1997; amd. Sec. 109, Ch. 42, L. 1997; amd. Sec. 68, Ch. 471, L. 1999; amd. Sec. 60, Ch. 114, L. 2003; amd. Sec. 118, Ch. 429, L. 2003.

19-50-103. No effect on other retirement programs — taxes deferred. The deferred compensation program established by this chapter is in addition to retirement, pension, or benefit systems, including plans qualifying under section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b), as amended, established by the state or a political subdivision, and no deferral of income under the deferred compensation program may affect a reduction of any retirement, pension, or other benefit provided by law. However, any sum deferred under the deferred compensation program is not subject to taxation until distribution is actually made to the participant or the participant's beneficiary because of severance from employment, retirement, or unforeseeable emergency. For purposes of this chapter, any qualified private pension plans now in existence qualify.

History: En. 68-2706 by Sec. 6, Ch. 264, L. 1974; R.C.M. 1947, 68-2706; amd. Sec. 3, Ch. 472, L. 1981; Sec. 19-2-103, MCA 1991; redes. 19-50-103 by Code Commissioner, 1993; amd. Sec. 61, Ch. 114, L. 2003; amd. Sec. 71, Ch. 329, L. 2005.

19-50-104. Eligibility to catch up — normal retirement age. (1) Except as provided in subsection (2), for the purposes of determining a participant's eligibility to catch up on making the maximum annual deferrals allowable, normal retirement age must be specified in writing by the participant and must be no earlier than:

(a) the age at which the participant is eligible to retire pursuant to the participant's Title 19 retirement system because of the participant's age, length of service, or both, without disability, and with the right to receive immediate retirement benefits without actuarial or similar reduction because of retirement before a specified age; or

(b) 65 years of age if the participant is not a member of a Title 19 retirement plan or system, is a member of a defined contribution retirement plan, or is an independent contractor.

(2) An eligible plan with participants that include qualified police or firefighters, as defined under 26 U.S.C. 415(b)(2)(H)(ii)(I), may either:

(a) designate a normal retirement age for the qualified police or firefighters that is no less than 40 years of age; or

(b) allow a qualified police or firefighter participant to designate a normal retirement age that is between 40 and 70 $\frac{1}{2}$ years of age.

(3) Qualified police or firefighters, as defined in 26 U.S.C. 415(b)(2)(H)(ii)(I), include:

(a) police who are members of the municipal police officers' retirement system provided for in Title 19, chapter 9;

(b) police who are members of a local police retirement system provided for in Title 19, chapter 19;

(c) firefighters who are members of the firefighters' unified retirement system provided for in Title 19, chapter 13;

(d) firefighters who are members of a local firefighters' retirement system provided for in Title 19, chapter 18; and

(e) firefighters who are members of the defined benefit retirement plan of the public employees' retirement system provided for in Title 19, chapter 3.

History: En. Sec. 129, Ch. 99, L. 2001; amd. Sec. 72, Ch. 329, L. 2005.

Part 2 Administration

19-50-201. Board authorized to make contracts with political subdivisions. (1) Effective July 1, 1983, a political subdivision may become a contracting employer and make all or specified groups of its employees eligible to participate in the state-administered deferred compensation program by a contract entered into and between the board and the legislative body of the political subdivision. The contract may include any provisions that are consistent with this chapter and necessary for the administration of the deferred compensation program.

(2) The approval and termination of the contract shall be subject to the following provisions:

(a) The legislative body of the political subdivision shall adopt a resolution to enter into a contract with the board authorizing its employees to participate in the state-administered deferred compensation program. The resolution must contain a summary of the major provisions of the state-administered deferred compensation program.

(b) The contract must specify that the political subdivision agrees that the board is the administrator of the deferred compensation program and agrees to the rules and conditions established by the board for the proper administration of the plan.

(c) The contract may be revoked or amended in the manner prescribed in the original approval of contracts.

History: En. 68-2702 by Sec. 2, Ch. 264, L. 1974; amd. Sec. 2, Ch. 60, L. 1977; R.C.M. 1947, 68-2702; amd. Sec. 4, Ch. 472, L. 1981; Sec. 19-2-201, MCA 1991; redes. 19-50-201 by Code Commissioner, 1993; amd. Sec. 69, Ch. 471, L. 1999.

19-50-202. Administration of program. The deferred compensation program shall be administered by the board or the appropriate officer designated by a political subdivision. Payroll deductions shall be made, in each instance, by the appropriate payroll officer. The administrator shall protect the interests of program participants and safeguard the assets of the deferred compensation plan and shall contract with private corporations, institutions, or individuals for administrative and marketing services. The administrator may solicit bids for options under 19-50-102. All contracts with marketing representatives must provide that all options in 19-50-102 be presented in an unbiased manner and in a manner so as to conform to applicable rules promulgated by the administrator, be reported on a periodic basis to all employees participating in eligible deferred compensation plans, and not be the subject of unreasonable solicitation of employees to participate in the program. All costs or fees in relation to the marketing of options provided under 19-50-102 shall be paid by the underwriting companies selected by the administrator or by the interest earnings accruing to the assets of the state deferred compensation investment fund.

History: En. 68-2703 by Sec. 3, Ch. 264, L. 1974; R.C.M. 1947, 68-2703; amd. Sec. 5, Ch. 472, L. 1981; Sec. 19-2-202, MCA 1991; redes. 19-50-202 by Code Commissioner, 1993; amd. Sec. 70, Ch. 471, L. 1999.

19-50-203. Payments authorized. Notwithstanding any other provision of law to the contrary, the board or a political subdivision is hereby authorized to make payments to eligible deferred compensation plans designated by this chapter. Such payments shall not be construed to be a prohibited use of the general assets of the state or a political subdivision.

History: En. 68-2705 by Sec. 5, Ch. 264, L. 1974; R.C.M. 1947, 68-2705; amd. Sec. 7, Ch. 472, L. 1981; Sec. 19-2-203, MCA 1991; redes. 19-50-203 by Code Commissioner, 1993; amd. Sec. 71, Ch. 471, L. 1999.

19-50-204. Public entity not to be liable. There shall be no financial liability of the state or a political subdivision for any investment losses incurred by any eligible deferred compensation plan established under this chapter.

History: En. 68-2707 by Sec. 7, Ch. 264, L. 1974; R.C.M. 1947, 68-2707; amd. Sec. 8, Ch. 472, L. 1981; Sec. 19-2-204, MCA 1991; redes. 19-50-204 by Code Commissioner, 1993.

19-50-205 reserved.

19-50-206. Repealed. Sec. 73, Ch. 471, L. 1999.

History: En. Sec. 6, Ch. 472, L. 1981; Sec. 19-2-206, MCA 1991; redes. 19-50-206 by Code Commissioner, 1993.

TITLE 20

EDUCATION

- Ch.
1. General Provisions.
 2. State Boards and Commissions.
 3. Elected Officials.
 4. Teachers, Superintendents, and Principals.
 5. Pupils.
 6. School Districts.
 7. School Instruction and Special Programs.
 8. Montana School for the Deaf and Blind.
 9. Finance.
 10. Transportation and Food Services.
 15. Community College Districts.
 20. School Elections.
 25. University System.
 32. Montana Educational Telecommunications Network.

CHAPTER 1

GENERAL PROVISIONS

Part 1 — Definitions

- 20-1-101. Definitions.
- 20-1-102. Legislative goals for public elementary and secondary schools.

Part 2 — Miscellaneous Provisions

- 20-1-201. School officers not to act as agents.
- 20-1-202. Oath of office.
- 20-1-203. Delivering items to successor.
- 20-1-204. County attorney's duties.
- 20-1-205. Conflict of interest.
- 20-1-206. Disturbance of school — penalty.
- 20-1-207. Penalty for violation of school laws.
- 20-1-208. Educational impact statements.
- 20-1-209. Judicial enforcement.
- 20-1-210. Nonfaculty coaches in private high schools.
- 20-1-211. Expenses of officers or employees attending conventions — educational associations.
- 20-1-212. Destruction of records by school officer.
- 20-1-213. Transfer of school records.
- 20-1-214. School crossing guards.
- 20-1-215 through 20-1-219 reserved.
- 20-1-220. Use of tobacco product in public school building or on public school property prohibited.
- 20-1-221 through 20-1-224 reserved.
- 20-1-225. Compliance with Military Selective Service Act for postsecondary financial assistance — rulemaking — definitions.

Part 3 — School Terms and Holidays—Released Time

- 20-1-301. School fiscal year.
- 20-1-302. School term, day, and week.
- 20-1-303. Conduct of school on Saturday or Sunday prohibited — exception.
- 20-1-304. Pupil-instruction-related day.
- 20-1-305. School holidays.
- 20-1-306. Commemorative exercises on certain days.
- 20-1-307. Provisions of school code excepted.
- 20-1-308. Religious instruction released time program.

Part 4 — Disaster Drills

- 20-1-401. Disaster drills to be conducted regularly — districts to identify disaster risks.
- 20-1-402. Number of disaster drills required — time of drills to vary.
- 20-1-403. Repealed.
- 20-1-404. Drill to sound on disaster evacuation system — recall signal to be distinct — control of signal.
- 20-1-405. Fire department to be called for actual fire.
- 20-1-406. Repealed.

- 20-1-407. Inspection of exits — cooperation with local authorities having jurisdiction in drills.
20-1-408. Repealed.

Part 5 — Indian Education for All

- 20-1-501. Recognition of American Indian cultural heritage — legislative intent.
20-1-502. American Indian studies — definitions.
20-1-503. Qualification in Indian studies — trustees and noncertified personnel.

**Part 1
Definitions**

20-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Accreditation standards” means the body of administrative rules governing standards such as:

- (a) school leadership;
- (b) educational opportunity;
- (c) academic requirements;
- (d) program area standards;
- (e) content and performance standards;
- (f) school facilities and records;
- (g) student assessment; and
- (h) general provisions.

(2) “Aggregate hours” means the hours of pupil instruction for which a school course or program is offered or for which a pupil is enrolled.

(3) “Agricultural experiment station” means the agricultural experiment station established at Montana state university-Bozeman.

(4) “At-risk student” means any student who is affected by environmental conditions that negatively impact the student’s educational performance or threaten a student’s likelihood of promotion or graduation.

(5) “Average number belonging” or “ANB” means the average number of regularly enrolled, full-time pupils physically attending or receiving educational services at an offsite instructional setting from the public schools of a district.

(6) “Board of public education” means the board created by Article X, section 9, subsection (3), of the Montana constitution and 2-15-1507.

(7) “Board of regents” means the board of regents of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1505.

(8) “Commissioner” means the commissioner of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1506.

(9) “County superintendent” means the county government official who is the school officer of the county.

(10) “District superintendent” means a person who holds a valid class 3 Montana teacher certificate with a superintendent’s endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a district superintendent.

(11) (a) “Educational program” means a set of educational offerings designed to meet the program area standards contained in the accreditation standards.

(b) The term does not include an educational program or programs used in 20-4-121 and 20-25-803.

(12) “K-12 career and vocational/technical education” means organized educational activities that have been approved by the office of public instruction and that:

(a) offer a sequence of courses that provide a pupil with the academic and technical knowledge and skills that the pupil needs to prepare for further education and for careers in the current or emerging employment sectors; and

(b) include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills of the pupil.

(13) (a) “Minimum aggregate hours” means the minimum hours of pupil instruction that must be conducted during the school fiscal year in accordance with 20-1-301 and includes passing time between classes.

(b) The term does not include lunch time and periods of unstructured recess.

(14) “Offsite instructional setting” means an instructional setting at a location, separate from a main school site, where a school district provides for the delivery of instruction to a student who is enrolled in the district.

(15) “Principal” means a person who holds a valid class 3 Montana teacher certificate with an applicable principal’s endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a principal. For the purposes of this title, any reference to a teacher must be construed as including a principal.

(16) “Pupil” means a child who is 6 years of age or older on or before September 10 of the year in which the child is to enroll or has been enrolled by special permission of the board of trustees under 20-5-101(3) but who has not yet reached 19 years of age and who is enrolled in a school established and maintained under the laws of the state at public expense. For purposes of calculating the average number belonging pursuant to 20-9-311, the definition of pupil includes a person who has not yet reached 19 years of age by September 10 of the year and is enrolled under 20-5-101(3) in a school established and maintained under the laws of the state at public expense.

(17) “Pupil instruction” means the conduct of organized instruction of pupils enrolled in public schools while under the supervision of a teacher.

(18) “Qualified and effective teacher or administrator” means an educator who is licensed and endorsed in the areas in which the educator teaches, specializes, or serves in an administrative capacity as established by the board of public education.

(19) “Regents” means the board of regents of higher education.

(20) “School food services” means a service of providing food for the pupils of a district on a nonprofit basis and includes any food service financially assisted through funds or commodities provided by the United States government.

(21) “State board of education” means the board composed of the board of public education and the board of regents as specified in Article X, section 9, subsection (1), of the Montana constitution.

(22) “State university” means Montana state university-Bozeman.

(23) “Student with limited English proficiency” means any student:

(a) (i) who was not born in the United States or whose native language is a language other than English;

(ii) who is an American Indian and who comes from an environment in which a language other than English has had a significant impact on the individual’s level of English proficiency; or

(iii) who is migratory, whose native language is a language other than English, and who comes from an environment in which a language other than English is dominant; and

(b) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the student:

(i) the ability to meet the state’s proficiency assessments;

(ii) the ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) the opportunity to participate fully in society.

(24) “Superintendent of public instruction” means that state government official designated as a member of the executive branch by the Montana constitution.

(25) “System” means the Montana university system.

(26) “Teacher” means a person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher includes a person for whom an emergency authorization of employment has been issued under the provisions of 20-4-111.

(27) “Textbook” means a book or manual used as a principal source of study material for a given class or group of students.

(28) “Textbook dealer” means a party, company, corporation, or other organization selling, offering to sell, or offering for adoption textbooks to districts in the state.

(29) “Trustees” means the governing board of a district.

(30) “University” means the university of Montana-Missoula.

(31) “Vocational-technical education” means vocational-technical education of vocational-technical students that is conducted by a unit of the Montana university system, a community college, or a tribally controlled community college, as designated by the board of regents.

History: (1), (14), (17), (19), (24)En. 75-8402 by Sec. 2, Ch. 2, L. 1971; Sec. 75-8402, R.C.M. 1947; (2)En. 75-6902 by Sec. 252, Ch. 5, L. 1971; amd. Sec. 1, Ch. 345, L. 1973; amd. Sec. 1, Ch. 343, L. 1974; amd. Sec. 3, Ch. 352, L. 1974; amd. Sec. 1, Ch. 373, L. 1974; amd. Sec. 1, Ch. 132, L. 1975; Sec. 75-6902, R.C.M. 1947; (3) thru (5), (16)En. Sec. 1, Ch. 344, L. 1973; Sec. 75-5609, R.C.M. 1947; (6)En. 75-5801 by Sec. 19, Ch. 5, L. 1971; amd. Sec. 28, Ch. 100, L. 1973; Sec. 75-5801, R.C.M. 1947; (7), (11), (20)En. 75-6101 by Sec. 82, Ch. 5, L. 1971; Sec. 75-6101, R.C.M. 1947; (8) thru (10), (25)En. Sec. 404, Ch. 5, L. 1971; (amd. Sec. 4, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 4, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); Sec. 75-7701, R.C.M. 1947; (12)En. 75-6301 by Sec. 114, Ch. 5, L. 1971; Sec. 75-6301, R.C.M. 1947; (13)En. 75-7401 by Sec. 365, Ch. 5, L. 1971; Sec. 75-7401, R.C.M. 1947; (15)En. 75-8001 by Sec. 442, Ch. 5, L. 1971; Sec. 75-8001, R.C.M. 1947; (18)En. 75-5701 by Sec. 10, Ch. 5, L. 1971; amd. Sec. 27, Ch. 100, L. 1973; Sec. 75-5701, R.C.M. 1947; (21), (22)En. 75-7601 by Sec. 393, Ch. 5, L. 1971; Sec. 75-7601, R.C.M. 1947; (23)En. 75-5901 by Sec. 30, Ch. 5, L. 1971; Sec. 75-5901, R.C.M. 1947; R.C.M. 1947, 75-5609, 75-5701, 75-5801, 75-5901(part), 75-6101, 75-6301, 75-6902(part), 75-7401, 75-7601, 75-7701, 75-8001, 75-8402; amd. Sec. 1, Ch. 334, L. 1979; amd. Sec. 1, Ch. 558, L. 1979; amd. Sec. 8, Ch. 598, L. 1979; amd. Sec. 1, Ch. 388, L. 1987; amd. Sec. 7, Ch. 658, L. 1987; amd. Sec. 11, Ch. 308, L. 1995; amd. Sec. 1, Ch. 133, L. 2001; amd. Sec. 2, Ch. 138, L. 2005; amd. Sec. 3, Ch. 208, L. 2005; amd. Sec. 1, Ch. 215, L. 2005; amd. Sec. 2, Ch. 570, L. 2005.

20-1-102. Legislative goals for public elementary and secondary schools. It is the goal of the legislature that Montana’s public elementary and secondary school system, in cooperation with parents or guardians, create a learning environment for each student that:

- (1) furthers the ability to reason critically and creatively;
- (2) fosters the ability to effectively communicate ideas, knowledge, and thoughts;
- (3) develops a sense of personal and civic responsibility;
- (4) develops a strong work ethic, postsecondary readiness, and employment skills; and
- (5) encourages a healthy lifestyle.

History: En. Sec. 1, Ch. 208, L. 2005.

Part 2 Miscellaneous Provisions

20-1-201. School officers not to act as agents. The superintendent of public instruction or members of his staff, county superintendent or members of his staff, trustee, or district employee shall not act as an agent or solicitor in the sale or supply of goods or services to a district. No such person shall assist or receive a reward from an agent or solicitor of goods or services for a district. Any such person violating this section shall be deemed guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than \$50 or more than \$200 and shall be liable to removal from his position. The penalties provided by this section shall not be applicable if the charge and conviction are made under the provisions of 20-7-608.

History: En. 75-8303 by Sec. 487, Ch. 5, L. 1971; R.C.M. 1947, 75-8303.

Cross-References

Code of ethics, Title 2, ch. 2, part 1.
 Proscribed acts related to contracts and claims, Title 2, ch. 2, part 2.
 Textbook regulation, Title 20, ch. 7, part 6.
 Deceptive business practices, 45-6-317, 45-6-318.

20-1-202. Oath of office. Any person elected or appointed to any public office authorized by this title shall take the oath of office before qualifying for and assuming the office. In case an officer has a written appointment or commission, his oath shall be endorsed thereon, otherwise it may be taken orally, and, in either case, it may, without charge or fee, be sworn to before an officer authorized to administer oaths for such public office.

History: En. 75-8304 by Sec. 488, Ch. 5, L. 1971; R.C.M. 1947, 75-8304.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.
Oath defined, 1-1-201.
Declaration in lieu of oath, 1-6-104.
Oath of Board of Regents, 2-15-1508.
Oath of Superintendent of Public Instruction and Deputy, 20-3-102, 20-3-103.
Oath of County Superintendent of Schools, 20-3-202.
County Superintendent's power to administer oath to trustees, 20-3-205.
Oath of school trustees, 20-3-307, 20-3-309.
Teachers' oath, 20-4-104.
Oaths of community college district trustees, 20-15-210, 20-15-222.

20-1-203. Delivering items to successor. Whenever any member of the trustees, superintendent, principal, or clerk of the district is replaced by election or otherwise, he shall immediately deliver all books, papers, and moneys pertaining to the position to his successor. Any such person who shall refuse to do so or who shall willfully destroy any such material or misappropriate any moneys entrusted to him shall be guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not more than \$100.

History: En. 75-5926 by Sec. 55, Ch. 5, L. 1971; R.C.M. 1947, 75-5926.

Cross-References

Personal immunity and liability of trustees, 20-3-332.
Criminal mischief — destruction of public property, 45-6-101.

20-1-204. County attorney's duties. Upon request of the county superintendent or the trustees of any school district or community college district, the county attorney shall be their legal adviser and shall prosecute and defend all suits to which such persons, in their capacity as public officials, may be a party; however, the trustees of any school district or community college district may, in their discretion, employ any other attorney licensed in Montana to perform any legal services in connection with school or community college board business.

History: En. 75-8305 by Sec. 489, Ch. 5, L. 1971; amd. Sec. 2, Ch. 263, L. 1971; amd. Sec. 1, Ch. 22, L. 1974; amd. Sec. 6, Ch. 121, L. 1977; R.C.M. 1947, 75-8305; amd. Sec. 1, Ch. 273, L. 1979.

Cross-References

Office of County Attorney, Title 7, ch. 4, part 27.
County Attorney to assist in school district bond proceedings, 20-9-436.

20-1-205. Conflict of interest. In the event there should arise a conflict of interest relating solely to the performance of the official duties of the county attorney and which does not relate to a conflict of interest involving the private employment of the county attorney, the trustees of any school district shall employ any other attorney licensed in Montana.

History: En. Sec. 2, Ch. 22, L. 1974; R.C.M. 1947, 75-8305.1.

Cross-References

Limitation on activities of County Attorneys and Deputies, 7-4-2704.
Conflicts of interests, letting contracts, and calling for bids, 20-9-204.

20-1-206. Disturbance of school — penalty. Any person who shall willfully disturb any school or any school meeting shall be deemed guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than \$10 or more than \$100.

History: En. 75-8306 by Sec. 490, Ch. 5, L. 1971; R.C.M. 1947, 75-8306.

Cross-References

Duties of pupils — sanctions, 20-5-201.
Disorderly conduct — disrupting public meeting, 45-8-101.

20-1-207. Penalty for violation of school laws. Unless otherwise specifically provided by law, any person who violates any provision of this title is guilty of a misdemeanor and if convicted by a court of competent jurisdiction shall be punished by a fine of not less than \$20 or more than \$200 or by imprisonment in the county jail for not less than 5 days or more than 30 days or by both such fine and imprisonment.

History: En. 75-8307 by Sec. 491, Ch. 5, L. 1971; amd. Sec. 29, Ch. 266, L. 1977; R.C.M. 1947, 75-8307.

Cross-References

Fines and penalties proceeds for elementary county equalization, 20-9-332.
Official misconduct, 45-7-401.

20-1-208. Educational impact statements. When a county superintendent of schools finds that a person intends to construct or locate a major industrial facility, as defined in 20-9-407, or intends to open a new strip mine, as defined by 82-4-103, within the county, the

superintendent may require such person to file with the county an educational impact statement. An educational impact statement is a report estimating the increased demands on public schools in the county as a consequence of the major industrial facility or strip mine. The statement shall indicate:

(1) the number of persons to be employed during the construction or preparation and during the operation of the major industrial facility or strip mine and their anticipated residential distribution;

(2) the number and anticipated distribution of persons employed in providing goods and services to the persons enumerated in the preceding category;

(3) the number of school-age children anticipated to be living with the persons enumerated in the preceding categories; and

(4) the time periods covered by each preceding estimate.

History: En. 75-8312 by Sec. 1, Ch. 119, L. 1975; amd. Sec. 30, Ch. 266, L. 1977; R.C.M. 1947, 75-8312.

Cross-References

Taxation of major new industrial facility in school district, 20-9-407.

Major facility siting, Title 75, ch. 20.

Strip and underground mine siting, Title 82, ch. 4, part 1.

20-1-209. Judicial enforcement. A district court, upon petition of a county, may enforce 20-1-208 with appropriate orders.

History: En. 75-8313 by Sec. 2, Ch. 119, L. 1975; R.C.M. 1947, 75-8313.

Cross-References

Uniform Declaratory Judgments Act, Title 27, ch. 8.

Injunctions, Title 27, ch. 19.

20-1-210. Nonfaculty coaches in private high schools. (1) A private or parochial high school is not bound by any rule or policy which prohibits the employment or association of part-time assistant athletic instructors with a high school who are not members of the regular faculty of the school, and no such school may be denied the privilege of participating in interscholastic competition with any school in this state because of the employment or association of such assistant athletic instructors with that school.

(2) Upon the complaint of an interested person, a district court may enjoin any association or combination of high schools from conspiring to violate this section or acting in concert in violation thereof.

History: En. 75-8314 by Sec. 1, Ch. 350, L. 1977; R.C.M. 1947, 75-8314.

Cross-References

Injunctions, Title 27, ch. 19.

Athletic event officials excluded from workers' compensation coverage, 39-71-401.

20-1-211. Expenses of officers or employees attending conventions — educational associations. (1) After July 1, 1921, no school district officer or employee of any school district shall receive payment from any public funds for traveling expenses or other expenses of any sort or kind for attendance upon any convention, meeting, or other gathering of public officers except for attendance upon such convention, meeting, or other gatherings as said officer or employee may by virtue of his office find it necessary to attend.

(2) The board of trustees of any county or district high school or of any school district may by resolution adopted by a majority of the entire board make their district a member of any state association of school districts or school district trustees or any other strictly educational association and authorize the payment of dues to such association and the necessary traveling expenses of employees or members of said board to attend meetings of such association or other meetings called for the express purpose of considering educational matters.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; R.C.M. 1947, 25-508(part).

Cross-References

Trustee travel reimbursement and compensation of secretary for joint board, 20-3-311.

Attendance at instructional and professional development meetings, 20-4-304.

20-1-212. Destruction of records by school officer. (1) Upon the order of the board of trustees, a school officer may destroy records that have met the retention period, as contained in the local government records retention and disposition schedules, and, with written approval of the local government records destruction subcommittee provided for in 2-6-403, any records not referenced in the retention and disposition schedule that are no longer needed by the office.

(2) Student records must be permanently kept, and employment records must be kept for 10 years after termination.

History: En. Sec. 2, Ch. 92, L. 1935; re-en. Sec. 455.2, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1967; amd. Sec. 79, Ch. 348, L. 1974; amd. Sec. 36, Ch. 213, L. 1975; R.C.M. 1947, 59-514(2); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 543, L. 1983; amd. Sec. 15, Ch. 420, L. 1993; amd. Sec. 2, Ch. 323, L. 1997.

Cross-References

Local government records, Title 2, ch. 6, part 4.

Destruction of certain financial records, 20-9-215.

20-1-213. Transfer of school records. (1) Subject to the provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, as amended, and its implementing regulations at 34 CFR, part 99, and to the provisions of the Individuals With Disabilities Education Act, 20 U.S.C. 1411 through 1420, and its implementing regulations at 34 CFR, part 300, local educational agencies and accredited schools shall adopt a policy that a certified copy of the permanent file, as defined by the board of public education, and the file containing special education records of a student will be forwarded by mail or electronically to a local educational agency or accredited school in which the student seeks or intends to enroll within 5 working days after a receipt of a written or electronic request.

(2) If records cannot be forwarded within 5 days, the local educational agency or accredited school shall notify the requestor in writing or electronically providing the reasons why the local educational agency or accredited school is unable to comply within the 5-day timeframe and the local educational agency or accredited school shall provide the date by which the requested records will be transferred.

(3) A local educational agency or accredited school may not refuse to transfer files because a student owes fines or fees.

(4) The files that are forwarded must include education records in the permanent file, special education records, and any disciplinary actions taken against the student that are educationally related.

(5) A local educational agency or accredited school may release student information to the juvenile justice system to assist the system's ability to effectively serve, prior to adjudication, the student whose records are released under provisions of 20 U.S.C. 1232g(B)(1)(E) of the Family Educational Rights and Privacy Act of 1974, as amended. The official to whom the records are disclosed shall certify in writing to the sending official that the information will not, except as provided by law, be disclosed to any other party without prior written consent of the parent of the student.

(6) The superintendent of public instruction is encouraged to contact other states or provinces and may enter into reciprocal records transfer agreements with the superintendent of public instruction or a department of education of any state or province. The superintendent of public instruction shall supply a copy of any reciprocal records transfer agreement that is executed to the county superintendent of each county that may be affected by the agreement.

(7) Upon request, the local educational agency or accredited school shall transfer by mail or electronically a copy of the permanent file to a nonpublic school or facility.

(8) As used in this section, "local educational agency" means a public school district or a state-funded school.

History: En. Sec. 1, Ch. 157, L. 1997.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

20-1-214. School crossing guards. (1) The trustees of a school district or the administration of a private school may organize and supervise school crossing guards for a school under their authority.

(2) The department of justice shall, in cooperation with the superintendent of public instruction and in accordance with the sign manual adopted by the department of

transportation, prescribe by rule the identification, training requirements, and operation of school crossing guards.

(3) The purpose of school crossing guards is to influence and encourage pupils of the school to refrain from crossing public highways at points other than regular crossings, to direct pupils as to where and when to cross highways, and to direct traffic when pupils are crossing highways at regular crossings.

History: En. Sec. 49, Ch. 352, L. 2003.

20-1-215 through 20-1-219 reserved.

20-1-220. Use of tobacco product in public school building or on public school property prohibited. (1) An individual may not use a tobacco product in a public school building or on public school property.

(2) Subsection (1) does not apply to the use of a tobacco product in a classroom or on other school property as part of a lecture, demonstration, or educational forum sanctioned by a school administrator or faculty member concerning the risks associated with use of a tobacco product.

(3) The principal of an elementary or secondary school, or the principal's designee, may enforce this section.

(4) A violation of this section is subject to the penalties provided in 50-40-115.

(5) For the purposes of this section, the following definitions apply:

(a) "Public school building" or "public school property":

(i) means public land, fixtures, buildings, or other property owned or occupied by an institution for the teaching of minor children that is established and maintained under the laws of the state of Montana at public expense; and

(ii) includes school playgrounds, school steps, parking lots, administration buildings, athletic facilities, gymnasiums, locker rooms, and school buses.

(b) "Tobacco product" means a substance intended for human consumption that contains tobacco, including cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco.

History: En. Sec. 9, Ch. 569, L. 1993; Sec. 20-5-411, MCA 1995; redes. 20-1-220 by Code Commissioner, 1997; amd. Sec. 1, Ch. 268, L. 2005.

Cross-References

Youth Access to Tobacco Products Control Act, Title 16, ch. 11, part 3.

Tobacco possession or consumption by persons under 18 years of age prohibited — penalties, 45-5-637.

20-1-221 through 20-1-224 reserved.

20-1-225. Compliance with Military Selective Service Act for postsecondary financial assistance — rulemaking — definitions. (1) A postsecondary educational institution may not provide student financial assistance to or enroll as a student an individual who is receiving or will receive student financial assistance unless the individual has complied with the registration requirements of the federal Military Selective Service Act, 50 App. U.S.C. 451, et seq. However, this prohibition does not apply to an individual who:

(a) by a preponderance of the evidence shows that the failure to register was not done knowingly or willfully; or

(b) is exempt from registration under the provisions of the Military Selective Service Act.

(2) The board of regents shall adopt rules to implement this section.

(3) The following definitions apply to this section:

(a) "Postsecondary educational institution" means:

(i) the Montana university system; or

(ii) any other postsecondary school:

(A) accepting as a student an individual receiving student financial assistance; or

(B) accepting state funds.

(b) "Student financial assistance":

(i) means a grant, loan, or insurance on a loan, all or a part of which is provided by the state; and

(ii) includes money given or to be given pursuant to:

(A) the financial assistance for resident nonbeneficiary students provision in 20-25-428;

(B) the work-study program provided for in Title 20, chapter 25, part 7;

(C) the Montana resident financial assistance program provided for in Title 20, chapter 26, parts 1 and 2; or

(D) the guaranteed student loan program provided for in Title 20, chapter 26, part 11.

History: En. Sec. 2, Ch. 320, L. 2001.

Part 3 School Terms and Holidays — Released Time

20-1-301. School fiscal year. (1) The school fiscal year begins on July 1 and ends on June 30. At least the minimum aggregate hours defined in subsection (2) must be conducted during each school fiscal year, except that 1,050 aggregate hours of pupil instruction for graduating seniors may be sufficient.

(2) The minimum aggregate hours required by grade are:

(a) 360 hours for a half-time kindergarten program or 720 hours for a full-time kindergarten program, as provided in 20-7-117;

(b) 720 hours for grades 1 through 3; and

(c) 1,080 hours for grades 4 through 12.

(3) For any elementary or high school district that fails to provide for at least the minimum aggregate hours, as listed in subsections (1) and (2), the superintendent of public instruction shall reduce the direct state aid for the district for that school year by two times an hourly rate, as calculated by the office of public instruction, for the aggregate hours missed.

History: En. 75-7402 by Sec. 366, Ch. 5, L. 1971; amd. Sec. 2, Ch. 373, L. 1974; R.C.M. 1947, 75-7402; amd. Sec. 6, Ch. 288, L. 1979; amd. Sec. 1, Ch. 148, L. 1981; amd. Sec. 1, Ch. 460, L. 1983; amd. Sec. 3, Ch. 22, L. 1997; amd. Sec. 110, Ch. 42, L. 1997; amd. Sec. 1, Ch. 430, L. 1997; amd. Sec. 5, Ch. 237, L. 2001; amd. Sec. 3, Ch. 138, L. 2005; amd. Sec. 9, Ch. 1, Sp. L. May 2007.

Compiler's Comments

2007 Special Session Amendment: Chapter 1 in (1) in second sentence at end after "sufficient" deleted "or a minimum of 360 aggregate hours of pupil instruction must be conducted for a kindergarten program, as provided in 20-7-117"; inserted (2)(a) concerning minimum hours for half-time and full-time kindergarten; and made minor changes in style. Amendment effective July 1, 2007.

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

Cross-References

Management of school funds by County Treasurer, 7-6-2801.

Elementary district abandonment, 20-6-209.

High school district abandonment, 20-6-307.

Formula for apportionment of county equalization money, 20-9-335.

Emergency school closure, Title 20, ch. 9, part 8.

20-1-302. School term, day, and week. (1) Subject to 20-1-301, 20-1-308, and any applicable collective bargaining agreement covering the employment of affected employees, the trustees of a school district shall set the number of days in a school term, the length of the school day, and the number of school days in a school week and report them to the superintendent of public instruction.

(2) When proposing to adopt changes to a previously adopted school term, school week, or school day, the trustees shall:

(a) negotiate the changes with the recognized collective bargaining unit representing the employees affected by the changes;

(b) solicit input from the employees affected by the changes but not represented by a collective bargaining agreement; and

(c) solicit input from the people who live within the boundaries of the school district.

History: En. 75-7403 by Sec. 367, Ch. 5, L. 1971; amd. Sec. 1, Ch. 417, L. 1973; amd. Sec. 3, Ch. 373, L. 1974; amd. Sec. 1, Ch. 130, L. 1977; R.C.M. 1947, 75-7403; amd. Sec. 2, Ch. 430, L. 1997; amd. Sec. 4, Ch. 138, L. 2005.

Cross-References

Duty of Board of Public Education to approve school day, 20-2-121(5).

Calculation of average number belonging, 20-9-311.

20-1-303. Conduct of school on Saturday or Sunday prohibited — exception. Except as provided in this section, pupil instruction may not be conducted on Saturday or Sunday. In emergencies, pupil instruction may be conducted on a Saturday when it is approved by the trustees of the school district in accordance with the policies adopted by the board of public education.

History: En. 75-7404 by Sec. 368, Ch. 5, L. 1971; R.C.M. 1947, 75-7404; amd. Sec. 1, Ch. 21, L. 2003.

Cross-References

Duty of Board of Public Education to adopt policy regarding school on Saturdays, 20-2-121(6).
 Power of Superintendent of Public Instruction to approve school on Saturdays, 20-3-106(17).

20-1-304. Pupil-instruction-related day. A pupil-instruction-related day is a day of teacher activities devoted to improving the quality of instruction. The activities may include but are not limited to inservice training, attending state meetings of teacher organizations, and conducting parent conferences. A maximum of 7 pupil-instruction-related days may be conducted during a school year, with a minimum of 3 of the days for instructional and professional development meetings or other appropriate inservice training, if the days are planned in accordance with the policy adopted by the board of public education. The days may not be included as a part of the required minimum aggregate hours of pupil instruction.

History: En. 75-7405 by Sec. 369, Ch. 5, L. 1971; R.C.M. 1947, 75-7405; amd. Sec. 1, Ch. 638, L. 1989; amd. Sec. 3, Ch. 430, L. 1997; amd. Sec. 5, Ch. 138, L. 2005.

Cross-References

Duty of Board of Public Education to adopt policy on pupil-instruction-related days, 20-2-121(6).
 Attendance at instructional and professional development meetings, 20-4-304.
 Instructional assistance by Superintendent of Public Instruction, 20-7-114.
 School closure by declaration of emergency, 20-9-806.

20-1-305. School holidays. (1) Pupil instruction and pupil-instruction-related days shall not be conducted on the following holidays:

- (a) New Year's Day (January 1);
- (b) Memorial Day (last Monday in May);
- (c) Independence Day (July 4);
- (d) Labor Day (first Monday in September);
- (e) Thanksgiving Day (fourth Thursday in November);
- (f) Christmas Day (December 25);

(g) State and national election days when the school building is used as a polling place and the conduct of school would interfere with the election process at the polling place.

(2) When these holidays fall on Saturday or Sunday, the preceding Friday or the succeeding Monday shall not be a school holiday.

History: En. 75-7406 by Sec. 370, Ch. 5, L. 1971; amd. Sec. 1, Ch. 159, L. 1974; R.C.M. 1947, 75-7406.

Cross-References

Legal holidays, 1-1-216.
 Teacher contract not to require teaching on school holidays, 20-4-201.

20-1-306. Commemorative exercises on certain days. (1) All districts shall conduct appropriate exercises during the school day on the following commemorative days:

- (a) Lincoln's Birthday (February 12);
- (b) Washington's Birthday (February 22);
- (c) Arbor Day (last Friday in April);
- (d) Flag Day (June 14);
- (e) Citizenship Day (September 17);
- (f) American Indian Heritage Day (fourth Friday in September);
- (g) Columbus Day (October 12);
- (h) Pioneer Day (November 1);
- (i) other days designated by the legislature or governor as legal holidays.

(2) When these commemorative days fall on Saturday or Sunday, exercises may be conducted the preceding Friday.

History: En. 75-7407 by Sec. 371, Ch. 5, L. 1971; R.C.M. 1947, 75-7407; amd. Sec. 1, Ch. 202, L. 1997.

Cross-References

Legal holidays, 1-1-216.
 Observance of right to keep and bear arms, 1-1-224.
 Arbor Day as official day of observance, 1-1-225.
 Official observance of Montana's hunting heritage, 1-1-226.

20-1-307. Provisions of school code excepted. Nothing contained in 1-1-216 defining legal holidays shall be deemed to amend or change the provisions of 20-1-305 and 20-1-306, said sections being hereby expressly declared to define legal holidays for school purposes only.

History: En. Sec. 2, Ch. 21, L. 1921; re-en. Sec. 11, R.C.M. 1921; re-en. Sec. 11, R.C.M. 1935; amd. Sec. 1, Ch. 240, L. 1975; R.C.M. 19-108.

20-1-308. Religious instruction released time program. (1) The trustees of a school district may provide for a religious instruction released time program under which a pupil may be released from regular school attendance for the purpose of receiving religious instruction upon written request, renewed at least annually, of the pupil's parent or guardian. The trustees shall determine the amount of time for which a pupil may be released for religious instruction.

(2) A religious instruction released time program may not be established or administered in such a way that public school property is utilized for the purpose of religious instruction.

(3) Public money may not be used, directly or indirectly, for the religious instruction.

(4) Any period for which a pupil is released under a religious instruction released time program is part of the school day and week for purposes of 20-1-301, 20-1-302, 20-5-103, 20-9-311, and all other provisions of Title 20, and the release may not adversely affect the pupil's attendance record.

History: En. 75-7403.1 by Sec. 2, Ch. 130, L. 1977; R.C.M. 1947, 75-7403.1; amd. Sec. 1, Ch. 84, L. 2001.

Cross-References

Equal protection of laws guaranteed, Art. II, sec. 4, Mont. Const.

No appropriation to be made for religious purposes, Art. V, sec. 11(5), Mont. Const.

Aid prohibited to sectarian schools, Art. X, sec. 6, Mont. Const.

Discrimination in education prohibited, Art. X, sec. 7, Mont. Const.

Sectarian publications prohibited and prayer permitted, 20-7-112.

Part 4 Disaster Drills

20-1-401. Disaster drills to be conducted regularly — districts to identify disaster risks. (1) As used in this part, "disaster" has the same meaning as in 10-3-103. Disaster drills must be conducted regularly in accordance with this part.

(2) A board of trustees shall identify the local hazards that exist within the boundaries of its school district and design drills to address those hazards.

History: En. 75-8308.1 by Sec. 1, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.1; amd. Sec. 1, Ch. 423, L. 1997.

20-1-402. Number of disaster drills required — time of drills to vary. There must be at least eight disaster drills a year in a school. At least four of the drills must be fire exit drills. Drills must be held at different hours of the day or evening to avoid distinction between drills and actual disasters.

History: En. Sec. 2, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.2; amd. Sec. 2, Ch. 423, L. 1997.

20-1-403. Repealed. Sec. 5, Ch. 423, L. 1997.

History: En. Sec. 3, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.3.

20-1-404. Drill to sound on disaster evacuation system — recall signal to be distinct — control of signal. (1) If a disaster drill is signaled, the signal must be sounded on the disaster alarm system and not on the signal system used to dismiss classes.

(2) The recall signal must be separate and distinct from any other signal. The recall signal may be given by distinctive colored flags or banners. If the recall signal is electrical, the push buttons or other controls must be kept under lock and the key kept in the possession of the principal or some other designated person in order to prevent a recall at a time when there is a disaster. Regardless of the method of recall, the means of giving the signal must be kept under lock.

History: En. Sec. 4, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.4; amd. Sec. 3, Ch. 423, L. 1997.

20-1-405. Fire department to be called for actual fire. Whenever any of the school authorities determine that an actual fire exists, they shall immediately call the local fire department using the public fire alarm system or such other facilities as are available.

History: En. Sec. 5, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.5.

20-1-406. Repealed. Sec. 5, Ch. 423, L. 1997.

History: En. Sec. 6, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.6.

20-1-407. Inspection of exits — cooperation with local authorities having jurisdiction in drills. It is the duty of the school authorities to inspect all exit facilities periodically in order to make sure that all stairways, doors, and other exits are in proper

condition. School authorities shall cooperate with the local authorities having jurisdiction in conducting disaster drills.

History: En. Sec. 7, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.7; amd. Sec. 4, Ch. 423, L. 1997.

20-1-408. Repealed. Sec. 11, Ch. 374, L. 2003.

History: En. 75-8310 by Sec. 494, Ch. 5, L. 1971; amd. Sec. 7, Ch. 234, L. 1977; R.C.M. 1947, 75-8310.

Part 5 Indian Education for All

20-1-501. Recognition of American Indian cultural heritage — legislative intent.

(1) It is the constitutionally declared policy of this state to recognize the distinct and unique cultural heritage of American Indians and to be committed in its educational goals to the preservation of their cultural heritage.

(2) It is the intent of the legislature that in accordance with Article X, section 1(2), of the Montana constitution:

(a) every Montanan, whether Indian or non-Indian, be encouraged to learn about the distinct and unique heritage of American Indians in a culturally responsive manner; and

(b) every educational agency and all educational personnel will work cooperatively with Montana tribes or those tribes that are in close proximity, when providing instruction or when implementing an educational goal or adopting a rule related to the education of each Montana citizen, to include information specific to the cultural heritage and contemporary contributions of American Indians, with particular emphasis on Montana Indian tribal groups and governments.

(3) It is also the intent of this part, predicated on the belief that all school personnel should have an understanding and awareness of Indian tribes to help them relate effectively with Indian students and parents, that educational personnel provide means by which school personnel will gain an understanding of and appreciation for the American Indian people.

History: En. Sec. 1, Ch. 527, L. 1999.

20-1-502. American Indian studies — definitions. As used in this part, the following definitions apply:

(1) “American Indian studies” means instruction pertaining to the history, traditions, customs, values, beliefs, ethics, and contemporary affairs of American Indians, particularly Indian tribal groups in Montana.

(2) “Instruction” means:

(a) a formal course of study or class, developed with the advice and assistance of Indian people, that is offered separately or that is integrated into existing accreditation standards by a unit of the university system or by an accredited tribal community college located in Montana, including a teacher education program within the university system or a tribal community college located in Montana, or by the board of trustees of a school district;

(b) inservice training developed by the superintendent of public instruction in cooperation with educators of Indian descent and made available to school districts;

(c) inservice training provided by a local board of trustees of a school district, which is developed and conducted in cooperation with tribal education departments, tribal community colleges, or other recognized Indian education resource specialists; or

(d) inservice training developed by professional education organizations or associations in cooperation with educators of Indian descent and made available to all certified and classified personnel.

History: En. Sec. 2, Ch. 527, L. 1999.

20-1-503. Qualification in Indian studies — trustees and noncertified personnel.

(1) The board of trustees for an elementary or secondary public school district may require that all of its certified personnel satisfy the requirements for instruction in American Indian studies. Pursuant to Article X, section 8, of the Montana constitution, this requirement may be a local school district requirement with enforcement and administration solely the responsibility of the local board of trustees.

(2) Members of boards of trustees and all noncertified personnel in public school districts are encouraged to satisfy the requirements for instruction in American Indian studies.

History: En. Sec. 3, Ch. 527, L. 1999.

CHAPTER 2 STATE BOARDS AND COMMISSIONS

Part 1 — State Board of Education—Board of Public Education—Board of Regents

- 20-2-101. Combined boards as state board — budget review — officers — meetings — quorum.
- 20-2-102 through 20-2-110 reserved.
- 20-2-111. Officers of boards — quorum.
- 20-2-112. Quarterly meetings of boards — called meetings — notice of meetings.
- 20-2-113. Per diem of board members — expenses.
- 20-2-114. Adoption of rules — seal — record of proceedings.
- 20-2-115. Repealed.
- 20-2-116 through 20-2-120 reserved.
- 20-2-121. Board of public education — powers and duties.
- 20-2-122. Executive secretary to board of public education — staff.
- 20-2-123 through 20-2-130 reserved.
- 20-2-131. Commissioner of higher education — duties — compensation — staff.

Parts 2 and 3 reserved

Part 4 — Commission on Federal Higher Education Programs

- 20-2-401. Definition.
- 20-2-402. Purpose.
- 20-2-403. Duties.

Part 5 — Compact for Education

- 20-2-501. Compact for Education approved.
- 20-2-502. Appointment of commissioners to the education commission of the states.
- 20-2-503. State obligations or rights under compact not altered.
- 20-2-504. Bylaws filed.
- 20-2-505. Limitation on power — adoption of rules.

Part 1 State Board of Education — Board of Public Education — Board of Regents

Part Cross-References

Boards of Education created — duties, Art. X, sec. 9, Mont. Const.; Title 2, ch. 15, part 15.

20-2-101. Combined boards as state board — budget review — officers — meetings — quorum. (1) The board of public education and the board of regents meeting together as the state board of education shall be responsible for long-range planning and for coordinating and evaluating policies and programs for the public educational systems of the state. The state board of education shall review and unify the budget requests of educational entities assigned by law to the board of public education, the board of regents, or the state board of education and shall submit a unified budget request with recommendations to the appropriate state agency.

(2) The governor is the president of, the superintendent of public instruction is the secretary to, and the commissioner shall be a nonvoting participant at all meetings of the state board of education.

(3) The state board of education may select a member to chair its meetings in the absence of the governor.

(4) A tie vote at any meeting may be broken by the governor.

(5) A majority of members appointed to the board of public education and the board of regents shall constitute a quorum for transaction of business as the state board of education.

(6) The board of public education and the board of regents shall meet at least twice yearly as the state board of education.

(7) Other meetings of the state board of education may be called by the governor, by both the secretary to the board of public education and the secretary to the board of regents, or by joint action of eight appointed members, four each from the board of public education and the board of regents. All meetings of the state board of education shall be for the purposes set forth in

subsection (1) above or for the purpose of considering other matters of common concern to the board of public education and the board of regents, but the state board of education may not exercise the powers and duties assigned by the 1972 Montana constitution and by law to the board of public education and the board of regents.

History: En. Sec. 7, Ch. 344, L. 1973; R.C.M. 1947, 75-5615; amd. Sec. 2, Ch. 21, L. 1985.

Cross-References

Regents' powers and duties, 20-25-301.

20-2-102 through 20-2-110 reserved.

20-2-111. Officers of boards — quorum. (1) The board of public education and the board of regents may each select a chairman from among their appointed members.

(2) The executive secretary shall serve as secretary to the board of public education, and the commissioner of higher education serves as secretary to the board of regents.

(3) A majority of the appointed members of each board constitutes a quorum for the transaction of business.

(4) The executive secretary shall serve as a liaison between the board of public education and the superintendent of public instruction and shall carry out other such duties as assigned by the board of public education.

History: En. Sec. 4, Ch. 344, L. 1973; amd. Sec. 2, Ch. 268, L. 1977; R.C.M. 1947, 75-5612; amd. Sec. 3, Ch. 21, L. 1985.

Cross-References

Regents' powers and duties, 20-25-301.

20-2-112. Quarterly meetings of boards — called meetings — notice of meetings.

(1) The board of public education and the board of regents shall meet at least quarterly.

(2) Other meetings of either board may be called by the governor, by the chairman, by the secretary, or by four appointed members.

(3) The secretary to each board shall mail notice to each member at least 7 days in advance of all meetings of the respective board.

History: En. Sec. 5, Ch. 344, L. 1973; R.C.M. 1947, 75-5613; amd. Sec. 4, Ch. 21, L. 1985.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

20-2-113. Per diem of board members — expenses. Appointed members of the board of public education and the board of regents shall be compensated and receive travel expenses as provided for in 2-15-124 for each day in attendance at board meetings or in the performance of any duty or service as a board member.

History: En. Sec. 6, Ch. 344, L. 1973; amd. Sec. 50, Ch. 439, L. 1975; R.C.M. 1947, 75-5614; amd. Sec. 6, Ch. 650, L. 1985.

20-2-114. Adoption of rules — seal — record of proceedings. The board of public education, the board of regents, and the state board of education each shall:

(1) adopt rules consistent with the constitution or laws of the state of Montana necessary for its own government or the proper execution of the powers and duties conferred upon it by law;

(2) adopt and use an official seal to authenticate its official acts; and

(3) keep a record of its proceedings.

History: En. Sec. 8, Ch. 344, L. 1973; R.C.M. 1947, 75-5616.

Cross-References

Seals defined, 1-4-201.

Manner of making seal, 1-4-202.

Regents' rulemaking power exempt from Montana Administrative Procedure Act, 2-4-102.

Public records, Title 2, ch. 6.

Preservation of records, Title 22, ch. 3, part 2.

20-2-115. Repealed. Sec. 6, Ch. 208, L. 2005.

History: En. Sec. 1, Ch. 691, L. 1985; amd. Sec. 1, Ch. 395, L. 1987; amd. Sec. 55, Ch. 633, L. 1993.

20-2-116 through 20-2-120 reserved.

20-2-121. Board of public education — powers and duties. The board of public education shall:

(1) effect an orderly and uniform system for teacher certification and specialist certification and for the issuance of an emergency authorization of employment by adopting the policies prescribed by 20-4-102 and 20-4-111;

(2) consider the suspension or revocation of teacher or specialist certificates and appeals from the denial of teacher or specialist certification in accordance with the provisions of 20-4-110;

(3) administer and order the distribution of BASE aid in accordance with the provisions of 20-9-344;

(4) adopt and enforce policies to provide uniform standards and regulations for the design, construction, and operation of school buses in accordance with the provisions of 20-10-111;

(5) adopt policies prescribing the conditions when school may be conducted on Saturday and the types of pupil-instruction-related days and approval procedure for those days in accordance with the provisions of 20-1-303 and 20-1-304;

(6) adopt standards of accreditation and establish the accreditation status of every school in accordance with the provisions of 20-7-101 and 20-7-102;

(7) approve or disapprove educational media selected by the superintendent of public instruction for the educational media library in accordance with the provisions of 20-7-201;

(8) adopt policies for the conduct of special education in accordance with the provisions of 20-7-402;

(9) adopt rules for issuance of documents certifying equivalency of completion of secondary education in accordance with 20-7-131;

(10) adopt policies for the conduct of programs for gifted and talented children in accordance with the provisions of 20-7-903 and 20-7-904;

(11) adopt rules for student assessment in the public schools; and

(12) perform any other duty prescribed from time to time by this title or any other act of the legislature.

History: En. 75-5607 by Sec. 8, Ch. 5, L. 1971; (amd. Sec. 15, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 15, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); amd. Sec. 1, Ch. 266, L. 1977; R.C.M. 1947, 75-5607; amd. Sec. 1, Ch. 511, L. 1979; amd. Sec. 9, Ch. 598, L. 1979; amd. Sec. 1, Ch. 94, L. 1983; amd. Sec. 1, Ch. 312, L. 1983; amd. Sec. 1, Ch. 377, L. 1987; amd. Sec. 40, Ch. 633, L. 1993; amd. Sec. 7, Ch. 138, L. 2005.

Cross-References

Duties of Board of Public Education, Art. X, sec. 9, Mont. Const.

20-2-122. Executive secretary to board of public education — staff. The board of public education may:

(1) appoint an executive secretary and employ other persons within legislatively authorized appropriations;

(2) prescribe the term, duties, and compensation of its executive secretary;

(3) provide office space for its staff to carry out its duties.

History: En. 75-5607.2 by Sec. 1, Ch. 268, L. 1977; R.C.M. 1947, 75-5607.2; amd. Sec. 1, Ch. 405, L. 1983.

20-2-123 through 20-2-130 reserved.

20-2-131. Commissioner of higher education — duties — compensation — staff. (1) The board of regents shall prescribe the duties of the commissioner of higher education and shall set his compensation.

(2) The board of regents shall provide sufficient staff and office space to the commissioner for him to carry out his duties.

History: En. Sec. 3, Ch. 344, L. 1973; R.C.M. 1947, 75-5611(2), (3).

Cross-References

Regents to appoint Commissioner of Higher Education, Art. X, sec. 9, Mont. Const.

Parts 2 and 3 reserved

Part 4

Commission on Federal Higher Education Programs

Part Cross-References

Commission on Federal Higher Education Programs, 2-15-1515.

20-2-401. Definition. Unless the context requires otherwise, in this part “commission” means the commission on federal higher education programs provided for in 2-15-1515.

History: En. 75-9002 by Sec. 2, Ch. 220, L. 1974; R.C.M. 1947, 75-9302.

20-2-402. Purpose. It is the purpose of this part to promote the education and welfare of the people of this state by creating an agency which meets the requirements of federal law to cooperate with the federal government in the establishment and administration of programs for higher education provided for by the congress of the United States.

History: En. 75-9001 by Sec. 1, Ch. 220, L. 1974; R.C.M. 1947, 75-9301.

20-2-403. Duties. The commission shall:

(1) administer state plans under Title I of the federal Higher Education Facilities Act of 1963, Public Law 88-204, as amended by Public Law 89-329;

(2) administer state plans under Title VI of the federal Higher Education Act of 1965, Public Law 89-329;

(3) administer state plans under Title I of the federal Higher Education Act of 1965; and

(4) administer other state plans under federal funding and grant programs which may be assigned by the governor or the legislature except those pertaining to the duties of the superintendent of public instruction and the board of public education.

History: En. 75-9003 by Sec. 4, Ch. 220, L. 1974; R.C.M. 1947, 75-9303.

Part 5 Compact for Education

20-2-501. Compact for Education approved. The Compact for Education established by the education commission of the states is enacted into law and entered into with all other jurisdictions legally joining in the compact, in the form substantially as follows:

THE COMPACT FOR EDUCATION

ARTICLE I

PURPOSE AND POLICY

(1) It is the purpose of this compact to:

(a) establish and maintain close cooperation and understanding among executive, legislative, professional educational, and lay leadership on a nationwide basis at the state and local levels;

(b) provide a forum for the discussion, development, crystallization, and recommendation of public policy alternatives in the field of education;

(c) provide a clearinghouse of information on matters relating to education problems and how they are being met in different places throughout the nation; and

(d) facilitate the improvement of state and local education systems.

(2) It is the policy of this compact to encourage and promote local and state initiative in the development, maintenance, improvement, and administration of education systems and institutions.

(3) The states that have entered into this compact recognize that each of them has an interest in the quality and quantity of education furnished in each of the other states, as well as in the excellence of its own education systems and institutions.

ARTICLE II

STATE DEFINED

As used in this compact, “state” means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

ARTICLE III

THE COMMISSION

(1) The education commission of the states (commission) is hereby established. The commission consists of seven members representing each state that has entered into the

compact. One of the state members must be the governor, two must be members of the legislature selected by its respective houses and serving in a manner as the legislature may determine, one must be the state superintendent of public instruction, and three must be appointed by and serve at the pleasure of the governor. The guiding principle for the composition of the membership on the commission from each party state must be that the members representing the state shall, by virtue of their training, experience, knowledge, or affiliations, reflect broadly the interests of the state government, higher education, the state education system, local education, and public and nonpublic educational leadership. In addition to the members of the commission representing the party states, there may be no more than 10 nonvoting commissioners selected by the steering committee for terms of 1 year. The commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.

(2) The members of the commission are entitled to one vote each on the commission. Any action of the commission is not binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor of the action. Any action of the commission must be taken only at a meeting at which a majority of the commissioners are present. The commission shall meet at least once a year. In its bylaws, and subject to any directions and limitations as may be contained in the bylaws, the commission may delegate the exercise of any of its powers to the steering committee or the executive director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to Article IV, and adoption of the annual report pursuant to Article III(10).

(3) The commission must have a seal.

(4) The commission shall elect annually, from among its members, a presiding officer, who must be a governor; a vice presiding officer; and a treasurer. The commission shall appoint an executive director. The executive director shall serve at the pleasure of the commission and, together with the treasurer and other personnel as the commission may consider appropriate, must be bonded in an amount determined by the commission. The executive director shall serve as secretary.

(5) The executive director, subject to the approval of the steering committee, shall appoint, remove, or discharge any personnel as may be necessary for the performance of the functions of the commission. The executive director shall fix the duties and compensation of the personnel. The commission in its bylaws shall provide for the personnel policies and programs of the commission.

(6) The commission may borrow, accept, or contract for the services of personnel.

(7) The commission may accept for any of its purposes and functions under this compact any donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation and may receive, utilize, and dispose of any gifts and grants. Any donation or grant accepted by the commission pursuant to this section or services borrowed pursuant to subsection (6) of this article must be reported in the annual report of the commission. The report must include the nature, amount, and conditions, if any, of the donation, grant, or services borrowed and the identity of the donor or lender.

(8) The commission may establish and maintain any facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest in property.

(9) The commission shall adopt bylaws for the conduct of its business and may amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy of its bylaws and any amendments with the appropriate agency or officer in each state that has entered into this compact.

(10) The commission annually shall make and provide to the governor and legislature of each state that has entered into the compact a report covering the activities of the commission for the preceding year. The commission may make any additional reports as it considers desirable.

ARTICLE IV

POWERS

In addition to any authority conferred on the commission by other provisions of the compact, the commission may:

- (1) collect, correlate, analyze, and interpret information and data concerning educational needs and resources;
- (2) encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public education systems;
- (3) develop proposals for adequate financing of education as a whole and at each of its many levels;
- (4) conduct or participate in research in any instance where it finds that the research is necessary for the advancement of the purposes and policies of this compact, utilizing fully the resources of national associations, regional organizations for higher education, and other agencies and institutions, both public and private;
- (5) formulate suggested policies and plans for the improvement of public education as a whole, or for any segment of public education, and make recommendations with respect to public education available to the appropriate governmental units, agencies, and public officers; and
- (6) do other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to the compact.

ARTICLE V

COOPERATION WITH FEDERAL GOVERNMENT

(1) If the laws of the United States specifically provide, or if administrative provision is made within the federal government, the United States may be represented on the commission by not more than 10 representatives. A representative of the United States must be appointed and serve in the manner as may be provided by federal law and may be drawn from any one or more branches of the federal government. A representative of the United States may not have a vote on the commission.

(2) The commission may provide information and make recommendations to any executive or legislative agency or officer of the federal government concerning the common educational policies of the states and may confer with any federal agencies or officers concerning any matter of mutual interest.

ARTICLE VI

COMMITTEES

(1) To assist in the conduct of its business when the full commission is not meeting, the commission shall elect a steering committee that, subject to the provisions of this compact and consistent with the policies of the commission, is constituted and functions as provided in the bylaws of the commission. One-fourth of the voting membership of the steering committee must consist of governors, one-fourth must consist of legislators, and the remainder must consist of other members of the commission. A federal representative on the commission may serve with the steering committee, but may not vote. The voting members of the steering committee shall serve a term of 2 years. The presiding officer, vice presiding officer, and treasurer of the commission must be members of the steering committee and, notwithstanding anything in this section to the contrary, shall serve during their continuance in these offices. Vacancies on the steering committee do not affect its authority to act, but the commission at its next regular meeting following the occurrence of any vacancy shall fill it for the unexpired term. A person may not serve more than two terms as a member of the steering committee, provided that service for a partial term of 1 year or less may not be counted toward the limitation.

(2) The commission may establish advisory and technical committees composed of state, local, or federal officers and private persons to advise it with respect to any one or more of its functions. An advisory or technical committee may, on request of the states concerned, be

established to consider any matter of special concern to two or more of the states that have entered into this compact.

- (3) The commission may establish any additional committees as its bylaws may provide.

ARTICLE VII

FINANCE

(1) The commission shall advise the governor or designated officer of each state that has entered into this compact of its budget and estimated expenditures for any period as may be required by the laws of that state. Each of the commission's budgets of estimated expenditures must contain specific recommendations of the amount to be appropriated by each of the states.

(2) The total amount of appropriation requests under any budget must be apportioned among the states. In making the apportionment, the commission shall devise and employ a formula that takes equitable account of the population and per capita levels of income of the states.

(3) The commission may not pledge the credit of any state. The commission may meet any of its obligations in whole or in part with money available to it pursuant to Article III of this compact, provided that the commission takes specific action setting aside the money before incurring an obligation to be met in whole or in part in that manner. Except when the commission makes use of money available to it pursuant to Article III, the commission may not incur any obligation before receiving an allotment of money from the states that is adequate to meet the obligation.

(4) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission are subject to the procedures for audit and accounting established by its bylaws. However, all receipts and disbursements of money handled by the commission must be audited yearly by a qualified public accountant. The report of the audit must be included in and become part of the annual report of the commission.

(5) The accounts of the commission must be open at any reasonable time for inspection by officers of the states that have entered into this compact and by any other persons authorized by the commission.

(6) The provisions in this compact may not prohibit compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VIII

ELIGIBLE PARTIES—ENTRY INTO AND WITHDRAWAL

(1) This compact has as eligible parties all states, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. With respect to any jurisdiction not having a governor, the term "governor", as used in this compact, means the closest equivalent officer of the jurisdiction.

(2) Any state or other eligible jurisdiction may enter into this compact and it becomes binding when it is adopted by that state or jurisdiction, except that in order to enter into initial effect, adoption by at least 10 eligible jurisdictions is required.

(3) Any state may withdraw from this compact by enacting a statute repealing the compact, but withdrawal may not take effect until 1 year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other states that have entered into this compact. Withdrawal does not affect any liability already incurred by or chargeable to a state before its withdrawal.

ARTICLE IX

AMENDMENTS TO THE COMPACT

This compact may be amended by a vote of two-thirds of the members of the commission present and voting when ratified by the legislatures of two-thirds of the states that have entered into this compact.

ARTICLE X

CONSTRUCTION AND SEVERABILITY

This compact must be liberally construed so as to accomplish its purposes. The provisions of this compact are severable, and if any phrase, clause, sentence, or provision of this compact is declared to be unconstitutional, or the application of the compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact may not be affected. If this compact is held to be contrary to the constitution of any state participating in the compact, the compact remains in effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 273, L. 2001.

20-2-502. Appointment of commissioners to the education commission of the states. (1) The seven members of the education commission of the states representing Montana are:

- (a) the governor;
- (b) one senator appointed by the committee on committees;
- (c) one representative appointed by the speaker of the house;
- (d) the superintendent of public instruction; and
- (e) three persons appointed by the governor, including:
 - (i) one educator engaged in the field of higher education; and
 - (ii) two educators engaged in the field of K-12 education.

(2) The term of each commissioner appointed by the legislature is 4 years, and legislators shall serve until the expiration of their appointments, even though their legislative terms may have ended. The commissioners appointed by the governor shall serve at the pleasure of the governor.

History: En. Sec. 2, Ch. 273, L. 2001.

20-2-503. State obligations or rights under compact not altered. The provisions of this part may not be construed to alter any of the obligations or restrict or impair any rights that this state may have under the compact.

History: En. Sec. 3, Ch. 273, L. 2001.

20-2-504. Bylaws filed. Pursuant to Article III(9) of 20-2-501, the commission shall file a copy of its bylaws and amendments to the bylaws with the secretary of state.

History: En. Sec. 4, Ch. 273, L. 2001.

20-2-505. Limitation on power — adoption of rules. (1) The provisions of this part may not be construed to bind or obligate the state of Montana to enact any new legislation or to amend any current laws pertaining to the administration and financing of education in Montana.

(2) The superintendent of public instruction may adopt rules that incorporate by reference the bylaws and any amendments to the bylaws provided for in Article III(9) of 20-2-501.

History: En. Sec. 5, Ch. 273, L. 2001.

CHAPTER 3

ELECTED OFFICIALS

Part 1 — Superintendent of Public Instruction

- 20-3-101. Election and qualifications.
- 20-3-102. Term, oath, and vacancy.
- 20-3-103. Deputy superintendent — staff.
- 20-3-104. Discretionary staff.
- 20-3-105. Administrative powers and duties.
- 20-3-106. Supervision of schools — powers and duties.
- 20-3-107. Controversy appeal.
- 20-3-108. Division of resources and assessment funds.
- 20-3-109. Honorary high school diploma for certain veterans.

Part 2 — County Superintendent of Schools

- 20-3-201. Election and qualifications — part-time office allowed.
- 20-3-202. Term, oath, and vacancy.
- 20-3-203. Office costs and staff.

- 20-3-204. Office hours.
- 20-3-205. Powers and duties.
- 20-3-206. Additional positions.
- 20-3-207. Assist trustees with school supervision.
- 20-3-208. Authority to request, accept, and disburse money.
- 20-3-209. Annual report.
- 20-3-210. Controversy appeals and hearings.
- 20-3-211. Disqualification of county superintendent.
- 20-3-212. The county superintendent to appoint another county superintendent.
- 20-3-213. Part-time office — establishment — restrictions.

Part 3 — School District Trustees

- 20-3-301. Election and term of office.
- 20-3-302. Legislative intent to elect less than majority of trustees.
- 20-3-303. Term of vacated trustee position after election.
- 20-3-304. Annual election.
- 20-3-305. Candidate qualification and nomination.
- 20-3-306. Conduct of election.
- 20-3-307. Qualification and oath.
- 20-3-308. Vacancy of trustee position.
- 20-3-309. Filling vacated trustee position — appointee qualification and term of office.
- 20-3-310. Trustee removal.
- 20-3-311. Trustee travel reimbursement and compensation of secretary for joint board.
- 20-3-312. Trustees of district affected by boundary change.
- 20-3-313. Election by acclamation — notice.
- 20-3-314 through 20-3-320 reserved.
- 20-3-321. Organization and officers.
- 20-3-322. Meetings and quorum.
- 20-3-323. District policy and record of acts.
- 20-3-324. Powers and duties.
- 20-3-325. Clerk of district.
- 20-3-326 through 20-3-329 reserved.
- 20-3-330. District self-funded health benefit plan reserve funds — exception for dissolution of plan.
- 20-3-331. Purchase of insurance — self-insurance plan.
- 20-3-332. Personal immunity of trustees.
- 20-3-333. Repealed.
- 20-3-334 and 20-3-335 reserved.
- 20-3-336. Single-member trustee districts — legislative intent — minority defined.
- 20-3-337. Plan for creating single-member trustee districts — petition election.
- 20-3-338. Trustees elected by single-member district.
- 20-3-339 and 20-3-340 reserved.
- 20-3-341. Number of trustee positions in elementary districts — transition.
- 20-3-342. Determination of terms after consolidation of elementary districts.
- 20-3-343. Determination of terms after change of district classification.
- 20-3-344. Nomination of candidates by petition in first-class elementary district.
- 20-3-345 through 20-3-350 reserved.
- 20-3-351. Number of trustee positions in high school districts.
- 20-3-352. Request and determination of number of high school district additional trustee positions — nonvoting trustee.
- 20-3-353. Establishment and purpose of trustee nominating districts.
- 20-3-354. Redetermination of additional trustee positions and subsequent adjustments.
- 20-3-355. Determination of terms after establishment or reestablishment of additional trustee positions.
- 20-3-356. Membership of elected trustees of county high school district and nomination of candidates.
- 20-3-357 through 20-3-360 reserved.
- 20-3-361. Joint board of trustees organization and voting membership.
- 20-3-362. Powers of joint board of trustees.
- 20-3-363. Interdistrict agreements — fund transfers.

Chapter Cross-References

- General election provisions, Title 13, ch. 1.
- Election and campaign practices and criminal provisions, Title 13, ch. 35.
- Control of campaign practices, Title 13, ch. 37.
- School elections, Title 20, ch. 20.

Part 1 Superintendent of Public Instruction

Part Cross-References

- Superintendent as part of Executive Branch, Art. VI, sec. 1, Mont. Const.

20-3-101. Election and qualifications. (1) A superintendent of public instruction for the state of Montana shall be elected by the qualified electors of the state at the general election preceding the expiration of the term of office of the incumbent.

(2) Any person shall be qualified to assume the office of superintendent of public instruction who:

- (a) is 25 years of age or older at the time of his election;
- (b) has resided within the state for the 2 years next preceding his election;
- (c) holds at least a bachelor's degree from any unit of the Montana university system or from an institution recognized as equivalent by the board of public education for teacher certification purposes; and
- (d) otherwise possesses the qualifications for such office which are required by The Constitution of the State of Montana.

History: En. 75-5702 by Sec. 11, Ch. 5, L. 1971; amd. Sec. 1, Ch. 17, L. 1973; R.C.M. 1947, 75-5702.

Cross-References

Election of Superintendent of Public Instruction, Art. VI, sec. 2, Mont. Const.

Qualifications of Superintendent of Public Instruction, Art. VI, sec. 3, Mont. Const.

Rules for determining residence, 1-1-215.

20-3-102. Term, oath, and vacancy. (1) The superintendent of public instruction shall hold office at the seat of government for the term of 4 years. He shall assume office on the first Monday of January following his election and shall hold the office until his successor has been elected and qualified. Any person elected as the superintendent of public instruction shall take the oath of a civil officer.

(2) If the office of superintendent of public instruction becomes vacant, it shall be filled in the manner prescribed by The Constitution of the State of Montana.

History: En. 75-5703 by Sec. 12, Ch. 5, L. 1971; R.C.M. 1947, 75-5703.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.; 20-1-202.

Vacancy in office — how filled, Art. VI, sec. 6, Mont. Const.; 2-16-505.

Oath defined, 1-1-201.

Affirmation in lieu of oath, 1-6-104.

Bonds of state officers and employees, Title 2, ch. 9, part 6.

20-3-103. Deputy superintendent — staff. (1) The state superintendent of public instruction shall appoint a deputy who, in the absence of the superintendent or in the case of vacancy in that office, shall perform all the duties of office until the disability is removed or the vacancy is filled. The deputy shall subscribe, take, and file the oath of office provided by law for other state officers before entering upon the performance of the deputy's duties.

(2) The superintendent of public instruction has the power to employ, organize, and administer a staff of personnel to assist in the administration of the duties and services of the office. In organizing the staff, the superintendent of public instruction may employ:

- (a) a supervisor of physical education who is a graduate of an accredited institution of higher education with a master's degree in physical education;
- (b) a professional staff consisting of individuals prepared in agriculture education, business and marketing education, family and consumer sciences education, and industrial technology education; and
- (c) a special education supervisor who is a graduate of an accredited institution of higher education with a master's degree in a field related to special education for persons with disabilities and who has not less than 2 years' experience in special education.

History: (1)En. Sec. 1, Ch. 86, L. 1903; re-en. Sec. 143, Rev. C. 1907; re-en. Sec. 122, R.C.M. 1921; re-en. Sec. 122, R.C.M. 1935; amd. Sec. 1, Ch. 181, L. 1947; amd. Sec. 1, Ch. 8, L. 1949; amd. Sec. 48, Ch. 177, L. 1965; amd. Sec. 3, Ch. 468, L. 1977; Sec. 82-601, R.C.M. 1947; (2)En. 75-5704 by Sec. 13, Ch. 5, L. 1971; Sec. 75-5704, R.C.M. 1947; R.C.M. 1947, 75-5704, 82-601(part); amd. Sec. 10, Ch. 598, L. 1979; amd. Sec. 1, Ch. 436, L. 1987; amd. Sec. 8, Ch. 658, L. 1987; amd. Sec. 2, Ch. 249, L. 1991; amd. Sec. 2, Ch. 133, L. 2001.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.; 20-1-202.

Oath defined, 1-1-201.

Affirmation in lieu of oath, 1-6-104.

Bonds of state officers and employees, Title 2, ch. 9, part 6.

Vocational education, Title 20, ch. 7, part 3.

Special education, Title 20, ch. 7, part 4.

20-3-104. Discretionary staff. In addition to the positions of employment listed in 20-3-103, the superintendent of public instruction may employ:

- (1) one or more assistant superintendents, one of whom may be designated as assistant superintendent for K-12 career and vocational/technical education;
- (2) a high school supervisor who is the holder of a class 3 teacher certificate with a district superintendent endorsement;
- (3) an elementary supervisor who is the holder of a valid teacher certificate;
- (4) a competent person to develop economy and efficiency in school transportation and to otherwise supervise the transportation program;
- (5) a music supervisor who is a graduate of an accredited institution of higher education in music education and who has not less than 5 years of teaching experience;
- (6) an educational media supervisor who is a graduate of an accredited institution of higher education and who has experience in the field of educational media; and
- (7) any other supervisors or assistants that may be required to carry out the duties of the office.

History: En. 75-5705 by Sec. 14, Ch. 5, L. 1971; R.C.M. 1947, 75-5705; amd. Sec. 11, Ch. 598, L. 1979; amd. Sec. 3, Ch. 133, L. 2001.

Cross-References

Vocational education, Title 20, ch. 7, part 3.
Transportation, Title 20, ch. 10.

20-3-105. Administrative powers and duties. In administering the affairs of his office, the superintendent of public instruction shall have the power and it shall be his duty to:

- (1) keep a record of his official acts and all documents applicable to the administration of the office, preserve all official reports submitted to him for the period required by law, and surrender them to his successor at the expiration of his term;
- (2) preserve all books, educational media, instructional equipment, and any other articles of educational interest and value which come into his possession and surrender them to his successor at the expiration of his term;
- (3) cause the printing and distribution of all reports and forms necessary for the proper conduct of business by a district or school in the manner prescribed by the provisions of this title;
- (4) provide and keep an official seal of the superintendent of public instruction by which his official acts shall be authenticated;
- (5) if he deems necessary, cause the printing of a complete and updated volume of the school laws of the state, which shall be offered and sold at cost of the printing and shipping to any school official or other person;
- (6) whenever a replacement volume is not printed under the provisions of subsection (5), cause the printing of a cumulative supplement to the most recent volume of school laws immediately after the conclusion of any session of the legislature at which new school laws or amendments to the school laws were adopted. It shall be offered and sold at cost of the printing and shipping to any school official or other person.
- (7) if deemed necessary, publish a biennial report of the superintendent of public instruction;
- (8) counsel with and advise county superintendents on matters involving the welfare of the schools and, when requested, give a county superintendent a written answer to any question concerning school law;
- (9) call an annual meeting of the county superintendents when he deems it advisable;
- (10) as far as he shall find it practicable, address public assemblies on subjects pertaining to education in Montana; and
- (11) faithfully work in all practical and possible ways for the welfare of the public schools of the state.

History: En. 75-5706 by Sec. 15, Ch. 5, L. 1971; R.C.M. 1947, 75-5706; amd. Sec. 6, Ch. 125, L. 1983; amd. Sec. 1, Ch. 410, L. 1987.

Cross-References

Duties of Superintendent of Public Instruction, Art. VI, sec. 4, Mont. Const.
Seals, Title 1, ch. 4, part 2.
Public records, Title 2, ch. 6.
Distribution of missing school children list, 44-2-503, 44-2-506.

20-3-106. Supervision of schools — powers and duties. The superintendent of public instruction has the general supervision of the public schools and districts of the state and shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

(5) approve or disapprove school isolation within the limitations prescribed by 20-9-302;

(6) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;

(7) establish a system of communication for calculating joint district revenue in accordance with the provisions of 20-9-151;

(8) approve or disapprove the adoption of a district's budget amendment resolution under the conditions prescribed in 20-9-163 and adopt rules for an application for additional direct state aid for a budget amendment in accordance with the approval and disbursement provisions of 20-9-166;

(9) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

(10) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(6) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

(11) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

(12) distribute BASE aid and special education allowable cost payments in support of the BASE funding program in accordance with the provisions of 20-9-331, 20-9-333, 20-9-342, 20-9-346, 20-9-347, and 20-9-366 through 20-9-369;

(13) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

(14) request, accept, deposit, and expend federal money in accordance with the provisions of 20-9-603;

(15) authorize the use of federal money for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

(16) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

(17) recommend standards of accreditation for all schools to the board of public education and evaluate compliance with the standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

(18) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

(19) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

(20) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

(21) as the governing agent and executive officer of the state of Montana for K-12 career and vocational/technical education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

(22) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

(23) administer the traffic education program in accordance with the provisions of 20-7-502;

(24) administer the school food services program in accordance with the provisions of 20-10-201 through 20-10-203;

(25) review school building plans and specifications in accordance with the provisions of 20-6-622;

(26) provide schools with information and technical assistance for compliance with the student assessment rules provided for in 20-2-121 and collect and summarize the results of the student assessment for the board of public education and the legislature;

(27) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties all school district student assessment data for a test required by the board of public education;

(28) administer the distribution of guaranteed tax base aid in accordance with 20-9-366 through 20-9-369; and

(29) perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education.

History: En. 75-5707 by Sec. 16, Ch. 5, L. 1971; amd. Sec. 2, Ch. 137, L. 1973; (amd. Sec. 16, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 16, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); amd. Sec. 3, Ch. 266, L. 1977; amd. Sec. 1, Ch. 277, L. 1977; R.C.M. 1947, 75-5707; amd. Sec. 1, Ch. 384, L. 1979; amd. Sec. 351, Ch. 571, L. 1979; amd. Sec. 12, Ch. 598, L. 1979; amd. Sec. 1, Ch. 299, L. 1985; amd. Sec. 2, Ch. 377, L. 1987; amd. Sec. 3, Ch. 635, L. 1987; amd. Sec. 9, Ch. 658, L. 1987; amd. Sec. 7, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 767, L. 1991; amd. Sec. 1, Ch. 325, L. 1993; amd. Sec. 4, Ch. 633, L. 1993; amd. Sec. 4, Ch. 219, L. 1997; amd. Sec. 1, Ch. 311, L. 1997; amd. Sec. 2, Ch. 388, L. 1997; amd. Sec. 4, Ch. 430, L. 1997; amd. Sec. 1, Ch. 343, L. 1999; amd. Sec. 4, Ch. 133, L. 2001; amd. Sec. 2, Ch. 21, L. 2003; amd. Sec. 1, Ch. 374, L. 2003.

Cross-References

State Board of Land Commissioners — membership on, Art. X, sec. 4, Mont. Const.

20-3-107. Controversy appeal. (1) The superintendent of public instruction shall decide matters of controversy when they are appealed from:

(a) a decision of a county superintendent rendered under the provisions of 20-3-210, except for a decision of a county superintendent or an arbitrator in a teacher termination case; or

(b) a decision of a county transportation committee rendered under the provisions of 20-10-132.

(2) The superintendent of public instruction shall make a decision on the basis of the transcript of the fact-finding hearing conducted by the county superintendent or county transportation committee and documents presented at the hearing. The superintendent of public instruction may require, if considered necessary, affidavits, verified statements, or sworn testimony as to the facts in issue. The decision of the superintendent of public instruction is final, subject to the proper legal remedies in the state courts. The proceedings must be commenced no later than 60 days after the date of the decision of the superintendent of public instruction.

(3) In order to establish a uniform method of hearing and determining matters of controversy arising under this title, the superintendent of public instruction shall prescribe and enforce rules of practice and regulations for the conduct of hearings and the determination of appeals by all school officials of the state.

(4) Whenever in a contested case the superintendent of public instruction is disqualified from rendering a final decision, the superintendent of public instruction shall appoint a hearings examiner as provided in 2-4-611 and the decision of the hearings examiner constitutes the superintendent's final order except as provided in this subsection. The final order is subject to all the provisions of Title 2, chapter 4, relating to final agency decisions or orders, including judicial review under Title 2, chapter 4, part 7.

History: En. 75-5709 by Sec. 18, Ch. 5, L. 1971; amd. Sec. 1, Ch. 300, L. 1974; R.C.M. 1947, 75-5709; amd. Sec. 2, Ch. 467, L. 1979; amd. Sec. 1, Ch. 438, L. 1997.

Cross-References

Oaths, Title 1, ch. 6.

Affidavits, Title 26, ch. 1, part 10.

Perjury, 45-7-201.

False swearing, 45-7-202.

20-3-108. Division of resources and assessment funds. Funds derived from the sale of educational materials or services provided by the division of resources and assessment must be deposited in the state general fund.

History: En. Sec. 1, Ch. 436, L. 1979; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 66, Ch. 370, L. 1987; amd. Sec. 1, Ch. 470, L. 1987; amd. Sec. 29, Ch. 422, L. 1997.

Cross-References

Special accounts, Title 17, ch. 2, part 2.

20-3-109. Honorary high school diploma for certain veterans. (1) The superintendent of public instruction may award an honorary high school diploma to a current or former Montana resident who:

- (a) did not receive a high school diploma; and
- (b) actively served in the United States armed services during World War II from 1939 through 1947, during the Korean war from 1950 through 1953, or during the Vietnam conflict from 1961 through 1975; and
 - (i) died in active service;
 - (ii) was honorably discharged; or
 - (iii) was released from active duty because of a service-related disability.

(2) (a) The superintendent shall identify acceptable documentation of eligibility and establish procedures for applying for an honorary diploma.

(b) The superintendent may accept an affidavit to support the award if acceptable documentation is not readily available from the military or other sources.

(3) An eligible person shall apply for the diploma on a form provided by the superintendent. If an eligible person is deceased or incapacitated, an immediate family member may apply on the person's behalf.

History: En. Sec. 1, Ch. 171, L. 2003.

Part 2 County Superintendent of Schools

Part Cross-References

County officers generally, Title 7, ch. 4.

Duties of County Sheriff, 7-4-3001; Title 7, ch. 32, part 21.

Membership in associations of County School Superintendents — payment of expenses, 7-5-2146.

20-3-201. Election and qualifications — part-time office allowed. (1) A county superintendent must be elected in each county of the state unless a county manager form of government has been organized in the county. The county superintendent must be elected at the general election preceding the expiration of the term of office of the incumbent.

(2) Upon verification by the county clerk and recorder, a person is qualified to file for and assume the office of county superintendent who:

- (a) is a qualified elector;
- (b) holds a valid, current class 1 professional certificate, class 2 standard certificate, or class 3 administrative and supervisory certificate issued by the superintendent of public instruction; and
- (c) has at least 3 years of successful teaching experience.

(3) (a) When the office of county superintendent of schools is consolidated with another county office within the county, the officeholder must have the qualifications listed in subsection (2) or shall, with the approval of the governing body, contract for the full performance of the duties required of a county superintendent in 20-3-207 and 20-3-210 with:

- (i) another county superintendent, with the approval of the governing body of that county;
- (ii) a former county superintendent; or
- (iii) a person who:
 - (A) is a qualified elector;
 - (B) holds a valid administrative certificate as provided in 20-4-106(1)(c);
 - (C) takes the oath of office in 20-1-202;
 - (D) is bonded in the manner provided for county officers in Title 2, chapter 9, part 7; and
 - (E) attends instructional training in the duties of a county superintendent as offered by the superintendent of public instruction.

(b) Whenever a governing body contracts with a person for performance of the duties required of a county superintendent under the provisions of subsection (3)(a)(iii), the contract must be for at least the duration of 1 school fiscal year.

(c) The superintendent of public instruction shall prescribe a contract form to be used.

(4) The board of county commissioners may establish the office of county superintendent as a part-time office under the provisions of 20-3-213, and adjust the salary established in 7-4-2503 to make it commensurate with the reduction in hours. A part-time county superintendent shall perform all duties of that office that are required by law.

History: En. 75-5802 by Sec. 20, Ch. 5, L. 1971; amd. Sec. 29, Ch. 100, L. 1973; R.C.M. 1947, 75-5802; amd. Sec. 1, Ch. 355, L. 1979; amd. Sec. 1, Ch. 550, L. 1985; amd. Sec. 1, Ch. 76, L. 1991; amd. Sec. 1, Ch. 146, L. 1993.

Cross-References

General qualifications for county office, 7-4-2201.
Consolidation of county offices, Title 7, ch. 4, part 23.
Salary, 7-4-2503.

20-3-202. Term, oath, and vacancy. (1) The county superintendent shall hold office for a term of 4 years. He shall assume office on the first Monday of January following his election and shall hold the office until his successor has been elected and qualified.

(2) Any person elected as the county superintendent shall take the oath or affirmation of office and shall give an official bond, as required by law.

(3) If the office of county superintendent becomes vacant, the board of county commissioners shall appoint a replacement to fill the vacancy. Such replacement shall serve until the next regular general election, when a person shall be elected to serve the remainder of the initial term, if there be any remaining term.

History: En. 75-5803 by Sec. 21, Ch. 5, L. 1971; R.C.M. 1947, 75-5803.

Cross-References

Constitutional oath, Art. III, sec. 3, Mont. Const.
Oaths, Title 1, ch. 6; 2-16-211; 20-1-202.
Term of office of county officers, 7-4-2205.
Vacancies in county offices generally, 7-4-2206.

20-3-203. Office costs and staff. (1) The board of county commissioners shall supply the county superintendent with suitable office space and office supplies. The county superintendent shall be paid from the county general fund all necessary traveling expenses that he actually incurs in discharging his duties, after such expenses have been audited by the board of county commissioners.

(2) Upon the county superintendent's recommendation of a candidate, the board of county commissioners may appoint such candidate to the position of chief deputy county superintendent. The commissioners also may appoint deputies and assistants for the county superintendent. The commissioners shall fix the salaries of the personnel prescribed by this section at 90% or less of the salary of the county superintendent.

History: En. 75-5804 by Sec. 22, Ch. 5, L. 1971; R.C.M. 1947, 75-5804.

Cross-References

Deputy county officers in general, Title 7, ch. 4, part 24.

20-3-204. Office hours. (1) Except for a part-time county superintendent provided for under 20-3-201(4), the county superintendent of schools shall, during the office hours determined by the governing body, keep the office of the county superintendent open each day when the county superintendent is not engaged in the supervision of schools, except legal holidays and Saturdays. However, when the county superintendent has a deputy or clerk, the office must be kept open during the hours determined by the governing body by resolution after a public hearing and consented to by the county superintendent, each day except legal holidays and Saturdays.

(2) This section does not apply to counties operating under the county manager plan.

History: En. Sec. 4323, Pol. C. 1895; re-en. Sec. 2968, Rev. C. 1907; re-en. Sec. 4736, R.C.M. 1921; Cal. Pol. C. Sec. 4116; re-en. Sec. 4736, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1949; amd. Sec. 1, Ch. 199, L. 1957; R.C.M. 1947, 16-2414(part); amd. Sec. 2, Ch. 146, L. 1993; amd. Sec. 7, Ch. 216, L. 1995.

Cross-References

Office hours, 7-4-102.

20-3-205. Powers and duties. (1) The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

- (a) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;
- (b) administer and file the oaths of members of the boards of trustees of the districts in the county in accordance with the provisions of 20-3-307;
- (c) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;
- (d) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;
- (e) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;
- (f) keep a transcript of the district boundaries of the county;
- (g) fulfill all responsibilities assigned under the provisions of this title regulating the organization, alteration, or abandonment of districts;
- (h) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;
- (i) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;
- (j) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;
- (k) complete the budgets, compute the budgeted revenue and tax levies, file final budgets and budget amendments, and fulfill other responsibilities assigned under the provisions of this title regulating school budgeting systems;
- (l) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;
- (m) monthly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-347, 20-10-145, or 20-10-146;
- (n) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(1)(c);
- (o) calculate the estimated budgeted general fund sources of revenue in accordance with the general fund revenue provisions of the general fund part of this title;
- (p) compute the revenue and compute the district and county levy requirements for each fund included in each district's final budget and report the computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;
- (q) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;
- (r) for districts that do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;
- (s) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;
- (t) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;
- (u) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;
- (v) administer the oath of office to trustees without the receipt of pay for administering the oath;
- (w) keep a record of official acts, preserve all reports submitted to the superintendent under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender all records, books, supplies, and equipment to the next superintendent;

(x) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(i) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(ii) the total receipts that were realized in each fund maintained by the district;

(iii) the total expenditures that were made from each fund maintained by the district; and

(iv) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

(y) hold meetings for the members of the trustees from time to time at which matters for the good of the districts must be discussed.

(2) (a) When a district in one county annexes a district in another county, the county superintendent of the county where the annexing district is located shall perform the duties required by this section.

(b) When two or more districts in more than one county consolidate, the duties required by this section must be performed by the county superintendent designated in the same manner as other county officials in 20-9-202.

History: (1) thru (22)En. 75-5805 by Sec. 23, Ch. 5, L. 1971; amd. Sec. 4, Ch. 266, L. 1977; Sec. 75-5805, R.C.M. 1947; (23) thru (26)En. 75-5807 by Sec. 25, Ch. 5, L. 1971; Sec. 75-5807, R.C.M. 1947; R.C.M. 1947, 75-5805, 75-5807; amd. Sec. 1, Ch. 269, L. 1979; amd. Sec. 15, Ch. 392, L. 1979; amd. Sec. 2, Ch. 511, L. 1979; amd. Sec. 5, Ch. 317, L. 1981; amd. Sec. 1, Ch. 35, L. 1989; amd. Sec. 8, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 767, L. 1991; amd. Sec. 6, Ch. 563, L. 1993; amd. Sec. 48, Ch. 633, L. 1993; amd. Sec. 4, Ch. 22, L. 1997; amd. Sec. 101, Ch. 584, L. 1999; amd. Sec. 2, Ch. 220, L. 2001; amd. Sec. 6, Ch. 237, L. 2001; amd. Sec. 2, Ch. 151, L. 2003; amd. Sec. 1, Ch. 463, L. 2005; amd. Sec. 5, Ch. 510, L. 2005; amd. Sec. 10, Ch. 1, Sp. L. May 2007.

Compiler's Comments

2007 Special Session Amendment: Chapter 1 in (1)(n) at end substituted "20-9-313(1)(c)" for "20-9-313(3)". Amendment effective July 1, 2007.

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

20-3-206. Additional positions. In the capacity as county superintendent, the county superintendent shall also serve as:

(1) the chairman of the county transportation committee, as prescribed by 20-10-131;

(2) an attendance officer for a district under the conditions prescribed by 20-5-104; and

(3) the clerk of a joint board of trustees under the conditions prescribed by 20-3-361.

History: En. 75-5806 by Sec. 24, Ch. 5, L. 1971; amd. Sec. 2, Ch. 277, L. 1977; R.C.M. 1947, 75-5806; amd. Sec. 5, Ch. 219, L. 1997.

Cross-References

Consolidation of county offices, Title 7, ch. 4, part 23.

20-3-207. Assist trustees with school supervision. The county superintendent shall assist the trustees of any district that does not employ a district superintendent or principal with the supervision of their schools by:

(1) visiting each school of the district at least once a school year while pupil instruction is being conducted to observe the instructional methods, ability of the teacher, progress and discipline of the pupils, and the general conditions of the school;

(2) special visits to the schools on request of the trustees;

(3) advising and directing teachers on instruction, pupil discipline, and other duties of the teacher;

(4) consulting with the trustees on all school matters that may be found during the observation of the school or may otherwise come to the attention of the county superintendent.

History: En. 75-5808 by Sec. 26, Ch. 5, L. 1971; R.C.M. 1947, 75-5808.

20-3-208. Authority to request, accept, and disburse money. (1) A county superintendent may, with the advice and consent of the appropriate school boards, request and accept money made available from federal, state, or private sources for purposes of public education.

(2) Subject to applicable federal and state guidelines and, in the case of money received from private sources, subject to any guidelines fixed by the donor, a county superintendent may, in his discretion, disburse money received under this section to one or more public elementary or

high school districts according to their needs. The county superintendent shall supervise the utilization of such money with the approval of the appropriate school boards.

(3) The county superintendent may establish a fund, for which the county treasurer shall maintain a separate accounting, for the deposit of money received under this section.

History: En. 75-5808.1 by Sec. 1, Ch. 238, L. 1977; R.C.M. 1947, 75-5808.1; amd. Sec. 1, Ch. 182, L. 1979.

Cross-References

Power to accept gifts, 20-6-601.

Fiscal duties of trustees, 20-9-213.

20-3-209. Annual report. The county superintendent of each county shall submit an annual report to the superintendent of public instruction not later than the second Monday in September. The report must be completed on the forms supplied by the superintendent of public instruction and must include:

(1) the final budget information for each district of the county, as prescribed by 20-9-134(1);
 (2) the revenue amounts used to establish the levy requirements for the county school fund supporting school district transportation schedules, as prescribed by 20-10-146, and for the county school funds supporting elementary and high school district retirement obligations, as prescribed by 20-9-501;

(3) the financial activities of each district of the county for the immediately preceding school fiscal year as provided by the trustees' annual report to the county superintendent under the provisions of 20-9-213(6); and

(4) any other information that may be requested by the superintendent of public instruction that is within the superintendent's authority prescribed by this title.

History: En. 75-5809 by Sec. 27, Ch. 5, L. 1971; R.C.M. 1947, 75-5809; amd. Sec. 2, Ch. 35, L. 1989; amd. Sec. 5, Ch. 22, L. 1997; amd. Sec. 2, Ch. 343, L. 1999; amd. Sec. 1, Ch. 276, L. 2003.

Cross-References

Duty of teachers to report, 20-4-301.

County Superintendent's annual financial report, 20-9-211.

Duty of trustees to report to County Superintendent, 20-9-213(6).

20-3-210. Controversy appeals and hearings. (1) Except for disputes arising under the terms of a collective bargaining agreement or as provided under 20-3-211 or 20-4-208, the county superintendent shall hear and decide all matters of controversy arising in the county as a result of decisions of the trustees of a district in the county. Only a county superintendent who possesses the qualifications of 20-3-201(2) may hear controversies related to teacher termination. Except as provided in subsection (2), exhaustion of administrative remedies under this chapter is required prior to filing an action in district court concerning a decision of the trustees. When appeals are made under 20-4-204 relating to the termination of services of a tenure teacher or under 20-4-207 relating to the dismissal of a teacher under contract, the county superintendent may appoint a qualified attorney to act as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. Subsequently, either the teacher or trustees may appeal to the district court of the county in which the teacher was employed. The proceedings must be commenced not later than 60 days after the date of the decision of the county superintendent. The county superintendent shall hear and decide all controversies arising under:

(a) 20-5-320 and 20-5-321 relating to the approval of out-of-district attendance agreements; or

(b) any other provision of this title for which a procedure for resolving controversies is not expressly prescribed.

(2) Exhaustion of administrative remedies is not a prerequisite to filing an action in district court concerning a decision of the trustees of a district in the following instances:

(a) a state agency has been granted primary jurisdiction over the matter;

(b) the matter is governed by a specific statute; or

(c) the board of trustees has acted without jurisdiction or in excess of its jurisdiction.

(3) The county superintendent shall hear the appeal and take testimony in order to determine the facts related to the controversy and may administer oaths to the witnesses that testify at the hearing. The county superintendent shall prepare a written transcript of the

hearing proceedings. The decision on the matter of controversy that is made by the county superintendent must be based upon the facts established at the hearing.

(4) Except for teacher termination cases, the decision of the county superintendent may be appealed to the superintendent of public instruction, and if it is appealed, the county superintendent shall supply a transcript of the hearing and any other documents entered as testimony at the hearing to the superintendent of public instruction. In teacher termination cases, an appeal may be filed with the district court of the county in which the teacher was employed no later than 60 days after the date of the decision of the county superintendent. If an appeal is filed, the county superintendent shall provide a transcript of the hearing and any other documents entered as testimony at the hearing to the district court.

(5) Cost incurred by the office of the county superintendent must be paid from the general fund budget of the county in which the controversy is initiated.

History: En. 75-5811 by Sec. 29, Ch. 5, L. 1971; amd. Sec. 1, Ch. 306, L. 1974; R.C.M. 1947, 75-5811; amd. Sec. 3, Ch. 489, L. 1979; amd. Sec. 1, Ch. 252, L. 1991; amd. Sec. 1, Ch. 439, L. 1991; amd. Sec. 7, Ch. 563, L. 1993; amd. Sec. 8, Ch. 438, L. 1997.

Cross-References

Oaths, Title 1, ch. 6.

Perjury, 45-7-201.

20-3-211. Disqualification of county superintendent. A county superintendent may not hear or decide matters of controversy pursuant to 20-3-210 when:

- (1) he is a party to or has an interest in the controversy;
- (2) he is related to either party in the controversy by consanguinity or affinity within the sixth degree, computed according to the rules of law;
- (3) either party to the controversy makes and files with the county superintendent of schools an affidavit that he has reason to believe and does believe that he cannot have a fair and impartial hearing before the county superintendent by reason of the bias or prejudice of the county superintendent; or
- (4) the controversy involves the education or possible identification of a child with a disability.

History: En. Sec. 1, Ch. 489, L. 1979; amd. Sec. 1, Ch. 236, L. 1987; amd. Sec. 10, Ch. 249, L. 1991; amd. Sec. 99(4), Ch. 51, L. 1999.

Cross-References

Code of ethics, Title 2, ch. 2, part 1.

20-3-212. The county superintendent to appoint another county superintendent.

(1) When a county superintendent is disqualified pursuant to 20-3-211, that county superintendent must appoint another county superintendent to hear and decide the matter of controversy arising pursuant to 20-3-210.

(2) The county in which the controversy was initiated shall reimburse the county served by the county superintendent appointed pursuant to subsection (1) for actual costs of travel, room, and board as a result of the appointment. Such county superintendent is entitled to expenses as provided in 20-3-203(1).

History: En. Sec. 2, Ch. 489, L. 1979.

20-3-213. Part-time office — establishment — restrictions. (1) A board of county commissioners that intends to establish the office of county superintendent of schools as a part-time office shall:

- (a) pass a resolution stating the intent of the board to consider the action;
- (b) set a date for a hearing on the issue and provide proper notice of the hearing;
- (c) conduct a hearing and accept testimony from any registered elector of the county who presents evidence for or against the establishment of the part-time office; and
- (d) within 5 days of the hearing, issue an order regarding the establishment of the part-time office.

(2) A board may not issue an order establishing the office of county superintendent as a part-time office less than 7 days before the date on which declarations for nominations may first be filed for the office.

(3) A board may not establish the office of county superintendent as a part-time office during a term of office for which a county superintendent has been elected as a full-time officeholder.

History: En. Sec. 3, Ch. 146, L. 1993.

Part 3 School District Trustees

Part Cross-References

School district trustees, Art. X, sec. 8, Mont. Const.

20-3-301. Election and term of office. (1) Every trustee position prescribed by this title shall be subject to election, and the term of office for each position shall be 3 years unless it is otherwise specifically prescribed by this title.

(2) The trustees shall be composed of the number of trustee positions prescribed for a district by 20-3-341 and 20-3-351. When exercising the power and performing the duties of trustees, the members shall act collectively and only at a regular or a properly called special meeting.

(3) The number of trustee positions in a district shall vary in accordance with 20-3-341 and 20-3-351 according to the type of district.

History: (1)En. 75-5906 by Sec. 35, Ch. 5, L. 1971; amd. Sec. 1, Ch. 122, L. 1975; Sec. 75-5906, R.C.M. 1947; (2)En. 75-5901 by Sec. 30, Ch. 5, L. 1971; Sec. 75-5901, R.C.M. 1947; (3)En. 75-5902 by Sec. 31, Ch. 5, L. 1971; amd. Sec. 1, Ch. 103, L. 1975; Sec. 75-5902, R.C.M. 1947; R.C.M. 1947, 75-5901(part), 75-5902(part), 75-5906.

Cross-References

Campaign finance provisions not to apply to election of school trustees, 13-37-206.

District classification, 20-6-201, 20-6-301.

20-3-302. Legislative intent to elect less than majority of trustees. (1) It is the intention of the legislature that the terms of a majority of the trustee positions of any district with elected trustees may not regularly expire and be subject to election on the same regular school election day. In elementary districts, there may not be more than three trustee positions in first-class districts, two trustee positions in second-class districts or third-class districts having five trustee positions, or one trustee position in third-class districts having three trustee positions regularly subject to election at the same time. In high school districts there may not be more than two additional trustee positions in first- or second-class districts or more than one in third-class districts regularly subject to election at the same time. In county high school districts, there may not be more than two trustee positions to be filled by members residing in the elementary district where the county high school building is located or more than one trustee position to be filled by members residing outside of the elementary district where the county high school building is located subject to election at the same time.

(2) In the following circumstances relating to newly created trustee positions, the initial terms may be shortened to comply with the intent of subsection (1):

(a) the consolidation under the provisions of 20-6-423 of two or more elementary districts to form an elementary district, of two or more high school districts to form a high school district, or of two or more K-12 districts to form a K-12 district;

(b) the establishment of additional trustee positions of a high school district under the provisions of 20-3-353 or 20-3-354 or new trustee positions under the provisions of 20-3-352(3);

(c) the change of a district's classification under the provisions of 20-6-201 or 20-6-301;

(d) the establishment of additional elementary trustee positions under the provisions of 20-3-341(3); or

(e) the establishment of additional high school trustee positions under the provisions of 20-6-313.

(3) If the change of a district's classification under 20-6-201 or 20-6-301 decreases the number of trustee positions, the positions must be eliminated in a manner that complies with the intent of subsection (1).

(4) Although the legislature intends that the terms of a majority of trustees of any district may not regularly expire and be subject to election at the same time, it is recognized that filling a vacancy under 20-3-308 may lead to a subsequent school election in which a majority of trustee positions are subject to election at the same time.

History: En. 75-5907 by Sec. 36, Ch. 5, L. 1971; amd. Sec. 2, Ch. 103, L. 1975; amd. Sec. 2, Ch. 122, L. 1975; R.C.M. 1947, 75-5907; amd. Sec. 2, Ch. 528, L. 1991; amd. Sec. 1, Ch. 137, L. 1993; amd. Sec. 6, Ch. 219, L. 1997; amd. Sec. 6, Ch. 510, L. 2005.

Cross-References

District classification, 20-6-201, 20-6-301.

Appointment of trustees when new high school district created, 20-6-313.

20-3-303. Term of vacated trustee position after election. Whenever a trustee position is subject to election because a vacancy of such position has occurred since the last regular school election day, the term of the trustee position shall not change and the member elected to fill such position shall serve the remainder of the unexpired term.

History: En. 75-5911 by Sec. 40, Ch. 5, L. 1971; R.C.M. 1947, 75-5911.

20-3-304. Annual election. In each district an election of trustees must be conducted annually on the regular school election day, the first Tuesday after the first Monday of May. Election of trustees must comply with the election provisions of Title 13 and this title.

History: En. 75-5912 by Sec. 41, Ch. 5, L. 1971; amd. Sec. 2, Ch. 109, L. 1974; R.C.M. 1947, 75-5912; amd. Sec. 353, Ch. 571, L. 1979; amd. Sec. 2, Ch. 514, L. 1999.

Cross-References

Election of trustees after organization of community college district, 20-15-221.

Regular school election day and special school elections, 20-20-105.

20-3-305. Candidate qualification and nomination. (1) Except as provided in 20-3-338, any person who is qualified to vote in a district under the provisions of 20-20-301 is eligible for the office of trustee.

(2) Except as provided in 20-3-338, any five electors qualified under the provisions of 20-20-301 of any district, except a first-class elementary district, may nominate as many trustee candidates as there are trustee positions subject to election at the ensuing election. The name of each person nominated for candidacy must be submitted to the clerk of the district not less than 40 days before the regular school election day at which the person is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated must also be indicated.

History: En. 75-5913 by Sec. 42, Ch. 5, L. 1971; R.C.M. 1947, 75-5913; amd. Sec. 1, Ch. 372, L. 1987; amd. Sec. 4, Ch. 539, L. 1987; amd. Sec. 3, Ch. 514, L. 1999.

Cross-References

Unlawful for trustee to be employed by or have certain contracts with trustee's school district, 20-9-204.

Regular school election day and special school elections, 20-20-105.

20-3-306. Conduct of election. (1) The trustees of each district shall call a trustee election on the regular school election day of each school fiscal year under the provisions of 20-20-201, except as provided in 20-3-313 and 20-3-344. The trustees shall call and conduct the trustee election in the manner prescribed in this title for school elections and Title 13. Any elector qualified to vote under the provisions of 20-20-301 may vote at a trustee election.

(2) The trustee election ballots must be substantially in the following form:

**OFFICIAL BALLOT
SCHOOL TRUSTEE ELECTION**

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the name of the candidate for whom you wish to vote.

Vote for (indicate number to be elected) for a 3-year term:

☐ (List the names of the candidates for a 3-year term with a vacant square in front of each name.)

Vote for (indicate number to be elected) for a 2-year term:

☐ (List the names of the candidates for a 2-year term with a vacant square in front of each name.)

Vote for (indicate number to be elected) for a 1-year term:

☐ (List the names of the candidates for a 1-year term with a vacant square in front of each name.)

History: En. 75-5915 by Sec. 44, Ch. 5, L. 1971; amd. Sec. 2, Ch. 165, L. 1973; amd. Sec. 2, Ch. 259, L. 1973; R.C.M. 1947, 75-5915; amd. Sec. 352, Ch. 571, L. 1979; amd. Sec. 2, Ch. 132, L. 1999.

Cross-References

Regular school election day and special school elections, 20-20-105.

20-3-307. Qualification and oath. (1) A person who receives a certificate of election as a trustee under the provisions of 20-3-313 or 20-20-416 may not assume the trustee position until the person has qualified. The person shall qualify by completing and filing an oath of office with the county superintendent not more than 15 days after the receipt of the certificate of election. After a person has qualified for a trustee position, the person holds the position until a successor has been elected or appointed and has been qualified.

(2) If the elected person does not qualify in accordance with this requirement, a person must be appointed in the manner provided by 20-3-309 and shall serve until the next regular election.

History: En. 75-5916 by Sec. 45, Ch. 5, L. 1971; amd. Sec. 1, Ch. 91, L. 1973; R.C.M. 1947, 75-5916; amd. Sec. 3, Ch. 132, L. 1999.

Cross-References

Constitutional oath of office, Art. III, sec. 3, Mont. Const.

Oath of office, 20-1-202.

20-3-308. Vacancy of trustee position. (1) Any elected trustee position shall be vacant whenever the incumbent:

- (a) dies;
- (b) resigns;
- (c) moves his residence from the applicable district or from the nominating district in the case of an additional trustee in a high school district;
- (d) is no longer a registered elector of the district under the provisions of 20-20-301;
- (e) is absent from the district for 60 consecutive days;
- (f) fails to attend three consecutive meetings of the trustees without a good excuse;
- (g) has been removed under the provisions of 20-3-310; or
- (h) ceases to have the capacity to hold office under any other provision of law.

(2) A trustee position also shall be vacant when an elected candidate fails to qualify under the provisions of 20-3-307.

History: En. 75-5917 by Sec. 46, Ch. 5, L. 1971; R.C.M. 1947, 75-5917.

Cross-References

Rules for determining residence, 1-1-215.

Vacancy in community college trustee position, 20-15-223.

20-3-309. Filling vacated trustee position — appointee qualification and term of office. (1) Whenever a trustee position becomes vacant in any district, the remaining members of the trustees shall declare such position vacant and they shall appoint, in writing within 60 days, a competent person as a successor. The trustees shall notify the appointee and the county superintendent of such appointment. If the trustees do not make the appointment within such 60-day period, the county superintendent shall appoint, in writing, a competent person as a successor and notify such person of his appointment.

(2) Any person who has been appointed to a trustee position shall qualify by completing and filing an oath of office with the county superintendent within 15 days after receiving notice of his appointment. Failure to file the oath of office shall constitute a continuation of the trustee position vacancy which shall be filled under the provisions of this section.

(3) Any person assuming a trustee position under the provisions of this section shall serve until the next regular school election and his successor has qualified.

History: En. 75-5918 by Sec. 47, Ch. 5, L. 1971; amd. Sec. 3, Ch. 122, L. 1975; amd. Sec. 5, Ch. 266, L. 1977; R.C.M. 1947, 75-5918; amd. Sec. 2, Ch. 269, L. 1979.

Cross-References

Filling vacancy in community college trustee position, 20-15-223.

20-3-310. Trustee removal. Any trustee may be removed from his trustee position by a court of competent jurisdiction under the law providing for the removal of elected civil officials. When charges are preferred against a trustee and good cause is shown, the board of county commissioners may suspend such trustee from his trustee position until the charges can be heard in the court of competent jurisdiction.

History: En. 75-5919 by Sec. 48, Ch. 5, L. 1971; R.C.M. 1947, 75-5919.

Cross-References

Notice of removal, 2-16-503.

Montana Recall Act, Title 2, ch. 16, part 6.

Removal for acceptance of emoluments, 20-7-608.

20-3-311. Trustee travel reimbursement and compensation of secretary for joint board. The members of the trustees of any district shall not receive compensation for their services as trustees, except that the secretary of the trustees of a high school district operating a county high school or the secretary of a joint board of trustees may be compensated for his services as the secretary. The members of the trustees who reside over 3 miles from the trustees' meeting place shall be reimbursed at the rate as provided in 2-18-503, for every mile necessarily traveled between their residence and the meeting place and return in attending the regular and special meetings of the trustees, and all trustees shall be similarly reimbursed for meetings called by the county superintendent. The travel reimbursement may be accumulated during the school fiscal year and paid at the end of the fiscal year, at the discretion of each trustee.

History: En. 75-5931 by Sec. 60, Ch. 5, L. 1971; amd. Sec. 1, Ch. 62, L. 1974; R.C.M. 1947, 75-5931.

Cross-References

Rules for determining residence, 1-1-215.

20-3-312. Trustees of district affected by boundary change. The trustees of any district to which the territory of another district is attached as a result of annexation, abandonment, territory transfer, or any other method of changing district boundaries, except by the consolidation of elementary districts, continue to be the trustees of the district with the same powers, duties, and responsibilities and subject to the same limitations provided by law as if there had been no boundary change. In the case of elementary district consolidation, the appointed trustees of the resulting elementary district shall assume their trustee positions under the authority of 20-6-423.

History: En. 75-6531 by Sec. 190, Ch. 5, L. 1971; R.C.M. 1947, 75-6531; amd. Sec. 7, Ch. 219, L. 1997; amd. Sec. 7, Ch. 510, L. 2005.

Cross-References

Elementary and high school districts, Title 20, ch. 6, parts 2 and 3.

School district reorganization, Title 20, ch. 6, part 4.

20-3-313. Election by acclamation — notice. (1) If the number of candidates filing for a position or filing a declaration of intent to be a write-in candidate under 13-10-211 is equal to the number of positions to be elected and there is no other reason for the election, the trustees may give notice that an election will not be held. Notice must be given no later than 25 days before the election.

(2) If an election is not held, the trustees shall declare elected by acclamation the candidate who filed for the position or who filed a declaration of intent to be a write-in candidate and issue a certificate of election to the candidate.

History: En. Sec. 1, Ch. 132, L. 1999; amd. Sec. 4, Ch. 15, L. 2001.

20-3-314 through 20-3-320 reserved.

20-3-321. Organization and officers. (1) The trustees of each district shall annually organize as a governing board of the district after the regular election day and after the issuance of the election certificates to the newly elected trustees, but not later than the third Saturday of May. In order to organize, the trustees of the district must be given notice of the time and place where the organization meeting will be held, and at the meeting they shall choose one of their number as the presiding officer. In addition, except for the trustees of a high school district operating a county high school, the trustees shall employ and appoint a competent person, who is not a member of the trustees, as the clerk of the district. The trustees of a high school district operating a county high school shall appoint a secretary, who must be a member of the board.

(2) The presiding officer of the trustees of any district shall serve until the next organization meeting and shall preside at all the meetings of the trustees in accordance with the customary rules of order. The presiding officer shall perform the duties prescribed by this title and any other duties that normally pertain to a presiding officer.

History: En. 75-5927 by Sec. 56, Ch. 5, L. 1971; amd. Sec. 5, Ch. 122, L. 1975; R.C.M. 1947, 75-5927; amd. Sec. 4, Ch. 514, L. 1999.

Cross-References

Regular school election day and special school elections, 20-20-105.
Certificate of election, 20-20-416.

20-3-322. Meetings and quorum. (1) The trustees of a district shall hold at least the following number of regular meetings:

- (a) an organization meeting, as prescribed by 20-3-321;
- (b) a final budget meeting, as prescribed by 20-9-131; and
- (c) in first-class elementary districts, not less than one regular meeting each month; or
- (d) in any other district, regular meetings at least quarterly.

(2) The trustees of the district shall adopt a policy setting the day and time for the minimum number of regular school meetings prescribed in subsection (1)(c) or (1)(d) and, in addition, any other regular meeting days the trustees wish to establish. Except for an unforeseen emergency, meetings must be conducted in school buildings or, upon the unanimous vote of the trustees, in a publicly accessible building located within the district.

(3) Special meetings of the trustees may be called by the presiding officer or any two members of the trustees by giving each member a 48-hour written notice of the meeting, except that the 48-hour notice is waived in an unforeseen emergency.

(4) Business may not be transacted by the trustees of a district unless it is transacted at a regular meeting or a properly called special meeting. A quorum for any meeting is a majority of the trustees' membership. All trustee meetings must be public meetings, as prescribed by 2-3-201, except that the trustees may recess to an executive session under the provisions of 2-3-203.

(5) For the purposes of subsection (3), "unforeseen emergency" means a storm, fire, explosion, community disaster, insurrection, act of God, or other unforeseen destruction or impairment of school district property that affects the health and safety of the trustees, students, or district employees or the educational functions of the district.

History: En. 75-5930 by Sec. 59, Ch. 5, L. 1971; R.C.M. 1947, 75-5930; amd. Sec. 2, Ch. 154, L. 1991; amd. Sec. 1, Ch. 50, L. 1993; amd. Sec. 1, Ch. 211, L. 1997; amd. Sec. 1, Ch. 467, L. 1999; amd. Sec. 1, Ch. 86, L. 2003; amd. Sec. 1, Ch. 438, L. 2005.

20-3-323. District policy and record of acts. (1) The trustees of each district shall prescribe and enforce policies for the government of the district. In order to provide a comprehensive system of governing the district, the trustees shall:

- (a) adopt the policies required by this title; and
- (b) adopt policies to implement or administer the requirements of the general law, this title, the policies of the board of public education, and the rules of the superintendent of public instruction.

(2) The trustees shall keep a full and permanent record of all adopted policies and all other acts of the trustees. Minutes of each regular and special board meeting shall include wording of motions, voting records of each trustee present, and all other pertinent information, including a detailed statement of all expenditures of money with the name of any person or business to whom payment is made and showing the service rendered or goods furnished. A written copy of the minutes shall be made available within 5 working days following the approval of the minutes by the board at a cost of no more than 15 cents a page to be paid by those who request such a copy. One free copy of the minutes shall be provided to the local press within 5 working days following the approval of the minutes by the board. The board shall approve the minutes of each special and regular meeting no later than 1 month following the meeting if it meets on a regular monthly basis. If a board does not regularly meet on a monthly basis, it shall approve the minutes of each special and regular meeting at the next regular or special meeting. The approval of the minutes of a prior meeting shall not occur more than 40 days after the meeting, except that no board shall be required to meet to approve the minutes of a meeting at which no substantive business was conducted.

History: En. 75-5932 by Sec. 61, Ch. 5, L. 1971; amd. Sec. 1, Ch. 192, L. 1975; amd. Sec. 6, Ch. 266, L. 1977; R.C.M. 1947, 75-5932; amd. Sec. 1, Ch. 360, L. 1979.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Public records, Title 2, ch. 6.

20-3-324. Powers and duties. As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher's aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the school districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) establish the ANB, BASE budget levy, over-BASE budget levy, additional levy, operating reserve, and state impact aid amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal cooperative fund, and other funds as authorized by the state superintendent of public instruction in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) set the length of the school term, school day, and school week in accordance with 20-1-302;

(18) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, K-12 career and vocational/technical education, and special education parts of this title;

(19) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(20) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(21) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to the child;

(22) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except that trustees from a first-class school district may share the responsibility for visiting each school in the district;

(23) procure and display outside daily in suitable weather on school days at each school of the district an American flag that measures not less than 4 feet by 6 feet;

(24) provide that an American flag that measures approximately 12 inches by 18 inches be prominently displayed in each classroom in each school of the district, except in a classroom in which the flag may get soiled. This requirement is waived if the flags are not provided by a local civic group.

(25) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110;

(26) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education;

(27) consider and may enter into an interlocal agreement with a postsecondary institution, as defined in 20-9-706, that authorizes 11th and 12th grade students to obtain credits through classes available only at a postsecondary institution;

(28) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of 20-1-303;

(29) consider and, if advisable for a high school or K-12 district, establish a student financial institution, as defined in 32-1-115; and

(30) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction.

History: (1), (3) thru (18), (23) En. Sec. 62, Ch. 5, L. 1971; amd. Sec. 1, Ch. 69, L. 1973; amd. Sec. 1, Ch. 280, L. 1973; Sec. 75-5933, R.C.M. 1947; (2), (19) thru (22) En. Sec. 63, Ch. 5, L. 1971; Sec. 75-5934, R.C.M. 1947; R.C.M. 1947, 75-5933(1) thru (18), 75-5934; amd. Sec. 1, Ch. 682, L. 1979; amd. Sec. 72, Ch. 575, L. 1981; amd. Sec. 2, Ch. 135, L. 1987; amd. Sec. 1, Ch. 145, L. 1987; amd. Sec. 2, Ch. 498, L. 1989; amd. Sec. 9, Ch. 11, Sp. L. June 1989; amd. Sec. 3, Ch. 767, L. 1991; amd. Sec. 1, Ch. 402, L. 1993; amd. Sec. 5, Ch. 633, L. 1993; amd. Sec. 6, Ch. 22, L. 1997; amd. Sec. 2, Ch. 311, L. 1997; amd. Sec. 102, Ch. 584, L. 1999; amd. Sec. 5, Ch. 133, L. 2001; amd. Sec. 2, Ch. 377, L. 2001; amd. Sec. 3, Ch. 21, L. 2003; amd. Sec. 2, Ch. 340, L. 2003; amd. Sec. 8, Ch. 138, L. 2005; amd. Sec. 21, Ch. 44, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 44 in (10) at beginning deleted "subject to 15-10-420"; in (13) near end after "cooperative" deleted "agreement"; and made minor changes in style. Amendment effective October 1, 2007.

Cross-References

Montana Administrative Procedure Act not applicable, 2-4-102.

Cooperative agreements with Indian tribes, Title 18, ch. 11.

Pupils, Title 20, ch. 5.

School districts, Title 20, ch. 6.

Trustees of elementary and high school districts to have same powers and duties, 20-6-101(3).

School instruction and special programs, Title 20, ch. 7.

School finance, Title 20, ch. 9.

Duties of trustees relating to food services, 20-10-204.

School elections, Title 20, ch. 20.

20-3-325. Clerk of district. (1) As provided in 20-3-321, the trustees shall employ and appoint a clerk of the district. The clerk of the district shall attend all meetings of the trustees to keep an accurate and permanent record of all the proceedings of each meeting. If the clerk is not present at a meeting, the trustees must have one of their members or a district employee act as clerk for the meeting, and that person shall supply the clerk with a certified copy of the proceedings. The clerk of the district must be the custodian of all documents, records, and reports of the trustees. Unless the trustees provide otherwise, the clerk shall:

(a) keep an accurate and detailed accounting record of all receipts and expenditures of the district in accordance with the financial administration provisions of this title; and

(b) prepare the annual trustees' report required under the provisions of 20-9-213.

(2) The clerk of the district shall provide the county treasurer with a minimum of 30 hours' notice in advance of cash demands to meet payrolls, claims, and electronic transfers that are in excess of \$50,000. If the clerk of the district fails to provide the required 30-hour notice, the

district must be assessed a fee equal to any charges demanded by the state investment pool or other permissible investment manager for improperly noticed withdrawal of funds.

History: En. 75-5935 by Sec. 64, Ch. 5, L. 1971; amd. Sec. 7, Ch. 266, L. 1977; R.C.M. 1947, 75-5935; amd. Sec. 1, Ch. 196, L. 2005.

Cross-References

Execution of contracts of employment, 20-4-201, 20-4-401.
 Signing of emergency budget, 20-9-165.
 Countersigning of warrants, 20-9-221.
 Execution of bonds, 20-9-433.
 Notification of bond payments, 20-9-442.
 Duty to prepare trustee election ballots, 20-20-401.

20-3-326 through 20-3-329 reserved.

20-3-330. District self-funded health benefit plan reserve funds — exception for dissolution of plan. (1) Except as provided in subsection (2), the trustees of a school district with a self-insured health benefit plan holding reserve funds shall use these funds to pay claims and other liabilities of the district's health benefit plan.

(2) Upon dissolution of a district's self-insured health benefit plan, all remaining reserves must be maintained by the district under the provisions of 20-3-331 and must be used to pay for employee benefit costs as determined by a collective bargaining agreement or an employer policy or as required by applicable state or federal law.

History: En. Sec. 1, Ch. 324, L. 2007.

Compiler's Comments

Effective Date — Applicability: Section 3, Ch. 324, L. 2007, provided: "[This act] is effective on passage and approval and applies to health benefit claims filed or self-insured health plans dissolved on or after [the effective date of this act]." Effective April 27, 2007.

20-3-331. Purchase of insurance — self-insurance plan. (1) The trustees of a district may purchase insurance coverage or establish a self-insurance plan for the district, trustees, and employees for liability as provided in 2-9-211 and for group health and life insurance as provided in 2-18-702. The trustees shall include the cost of coverage in the general fund budget of the district and as authorized for the district transportation program in 20-10-143(1)(d).

(2) Whenever the trustees of a district establish a self-insurance plan, the trustees shall establish an internal service fund to account for the activities of the self-insurance plan.

History: En. 75-5939 by Sec. 68, Ch. 5, L. 1971; R.C.M. 1947, 75-5939; amd. Sec. 3, Ch. 425, L. 1979; amd. Sec. 73, Ch. 575, L. 1981; amd. Sec. 1, Ch. 15, L. 1985; amd. Sec. 2, Ch. 299, L. 1985; amd. Sec. 10, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 568, L. 1991.

20-3-332. Personal immunity of trustees. (1) When acting in their official capacity at a regular or special meeting of the board or a committee of the board, the trustees of each district are individually immune from suit for damages, as provided in 2-9-305.

(2) The trustees of each district are responsible for the proper administration and use of all money of the district in accordance with the provisions of law and this title. Failure or refusal to do so constitutes grounds for removal from office.

History: En. 75-5941 by Sec. 70, Ch. 5, L. 1971; amd. Sec. 2, Ch. 91, L. 1973; R.C.M. 1947, 75-5941; amd. Sec. 1, Ch. 479, L. 1983; amd. Sec. 1, Ch. 310, L. 1999; amd. Sec. 1, Ch. 343, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 343 in (1) at end after "immune" substituted "from suit for damages, as provided in 2-9-305" for "from exemplary and punitive damages"; and in (2) deleted former third sentence that read: "The liability of trustees for violations of this section must be determined in accordance with the provisions of 2-9-305." Amendment effective April 28, 2007.

Cross-References

State or other governmental entity immune from exemplary or punitive damages, 2-9-105.
 Delivering items to successor, 20-1-203.
 Trustee removal, 20-3-310.
 Acceptance of emoluments, 20-7-608.
 Costs, Title 25, ch. 10.
 Joint and several liability — right of contribution, 27-1-703.
 Official misconduct, 45-7-401.

20-3-333. Repealed. Sec. 14, Ch. 309, L. 1981.

History: En. 75-6309 by Sec. 122, Ch. 5, L. 1971; R.C.M. 1947, 75-6309(part).

20-3-334 and 20-3-335 reserved.

20-3-336. Single-member trustee districts — legislative intent — minority defined. (1) It is the intent of the legislature to provide a board of trustees of a school district with the option to:

(a) review the voting and population patterns of minorities of the school district, as determined by the most recent federal decennial census, voting records, and other pertinent information; and

(b) create single-member trustee districts within the school district:

(i) if the board determines that the present trustee selection process does not serve the best interests of the electors of the district or ensure that the access of minority populations to the political process is not diluted in contravention of federal law; or

(ii) pursuant to a petition as provided in 20-3-337.

(2) “Minority”, as used in 20-3-337 and this section, means a minority whose rights are protected under section 2 of the Voting Rights Act of 1965 (42 U.S.C. 1973), as amended.

History: En. Sec. 1, Ch. 539, L. 1987; amd. Sec. 1, Ch. 548, L. 2001.

20-3-337. Plan for creating single-member trustee districts — petition election. (1) Except as provided in subsection (8), the board of trustees of a school district may establish a procedure for studying the appropriateness of creating single-member trustee districts within the school district.

(2) If the board considers a single-member district plan, the plan must establish single-member districts that:

(a) are as compact in area and as equal in population as possible; and

(b) provide equitable voting rights for the minorities residing within the school district by ensuring that the access of minorities to the political process is not diluted in contravention of the Voting Rights Act Amendments of 1982, Public Law 97-205.

(3) If the board determines that it is in the best interest of the electors of the school district, it shall:

(a) propose creation of a single-member trustee district plan;

(b) schedule and hold a public hearing on the proposed plan; and

(c) publish in a newspaper of general circulation in the district a notice of the public hearing, including a map of the proposed single-member trustee district plan, and the reasons why the board believes that the plan satisfies the criteria set forth in subsection (2).

(4) After the public hearing is held, the board shall forward a copy of the proposed single-member trustee district plan to the secretary of state and the superintendent of public instruction for review and comment. The copy of the proposed plan must be accompanied by:

(a) a map indicating the circulation of the newspaper in which the notice required in subsection (3) was published;

(b) the published notice of the public hearing;

(c) a map of the proposed single-member trustee district plan; and

(d) a summary of any public comments to the board regarding the proposed plan.

(5) After receiving comments from the secretary of state and the superintendent of public instruction, the board of trustees may amend, revise, approve, or disapprove the proposed plan.

If the plan is adopted by the board, it shall:

(a) inform the county superintendent of schools of its adoption;

(b) publish notice of the adoption in a newspaper of general circulation within the district, including identification of the boundaries of each new single-member trustee district and the implementation date of the plan; and

(c) file with the county clerk and recorder a certificate designating the boundary lines and limits of each single-member trustee district.

(6) All successors to the board of trustees must be elected in accordance with the adopted single-member trustee district plan.

(7) A change in the boundaries of a trustee district may not be made within 3 months preceding a regular school election day as provided in 20-3-304.

(8) If the board receives a petition signed by 10% or more of the qualified electors of the school district, the board shall submit the request to create a single-member trustee district to

the electors who are qualified under 20-20-301 to vote upon the request. The petition submitted to the board must:

- (a) conform to the requirements of subsections (2)(a) and (2)(b);
- (b) be forwarded to the secretary of state and the superintendent of public instruction for review and comment;
- (c) include a map of the proposed single-member trustee district, identifying the boundaries of each new single-member trustee district and the implementation date of the district;
- (d) be forwarded to the county clerk and recorder, designating the boundary lines and limits of each single-member trustee district; and
- (e) include a plan for election and terms of trustees of the single-member district, who must be residents of the proposed district, and provide for the terms of successors to the board of trustees in a single-member trustee district approved by the electors.

(9) If the petition meets the requirements of subsection (8), the board shall call an election on the question of whether to create a single-member trustee district. The election must be held at the next school election scheduled pursuant to 20-20-105 and must be conducted in the manner prescribed by this title for school elections. The published notice must include a map and a description of the boundaries of the proposed district.

(10) If a majority of the votes cast at the election approve the creation of a single-member trustee district, the election administrator shall, within 10 days of receipt of the official canvass of the result, certify that the district is formed.

(11) When a trustee position becomes vacant in a single-member district, the position must be filled in accordance with the provisions of 20-3-309, except that the position must be filled by a person who resides within the single-member district.

History: En. Sec. 2, Ch. 539, L. 1987; amd. Sec. 2, Ch. 548, L. 2001.

20-3-338. Trustees elected by single-member district. (1) At each annual election provided for in 20-3-304, each trustee candidate in a single-member trustee district must be a qualified elector of the trustee district and have resided in the trustee district to be represented for at least 1 year prior to becoming a candidate for the trustee position.

(2) Nomination of trustee candidates under the provisions of 20-3-305 and 20-3-344 must be by electors of the trustee district.

(3) The election of each trustee must be submitted to the electors in the trustee district who are qualified to vote under the provisions of 20-20-301.

History: En. Sec. 3, Ch. 539, L. 1987.

20-3-339 and 20-3-340 reserved.

20-3-341. Number of trustee positions in elementary districts — transition. The number of trustee positions in each elementary district shall vary according to the district's classification, as established by 20-6-201:

(1) There must be seven trustee positions in a first-class elementary district.

(2) There must be five trustee positions in a second-class elementary district; however, upon a majority vote of the board of trustees, the number may be increased to seven trustee positions at the next trustee election, provided that notice of the action of the board of trustees is published by the clerk of the district in a newspaper of general circulation in the county prior to January 1 of the year of the trustee election. The board of trustees may reduce the number of trustee positions from seven to five upon receiving a petition for that purpose from at least 10 qualified electors of the district.

(3) There must be three trustee positions in a third-class elementary district; however, upon a majority vote of the board of trustees, the number may be increased to five trustee positions at the next trustee election, provided that notice of the action of the board of trustees is published by the clerk of the district in a newspaper of general circulation in the county prior to January 1 of the year of the trustee election. The board of trustees may reduce the number of trustee positions from five to three upon receiving a petition for that purpose from at least 10 qualified electors of the district.

(4) (a) If the number of trustee positions in a second-class elementary district is decreased from seven to five in accordance with the provisions of subsection (2), one position is eliminated

at the time of the first subsequent school election and one position is eliminated at the next school election.

(b) If the number of trustee positions in a third-class elementary district is decreased from five to three in accordance with the provisions of subsection (3), one position is eliminated at the time of the first subsequent school election when two trustee positions would have been filled and one position is eliminated at the next school election when two trustee positions would have been filled.

History: En. 75-5902 by Sec. 31, Ch. 5, L. 1971; amd. Sec. 1, Ch. 103, L. 1975; R.C.M. 1947, 75-5902(1); amd. Sec. 1, Ch. 591, L. 1989; (4)En. Sec. 2, Ch. 591, L. 1989; amd. Sec. 1, Ch. 45, L. 1993.

20-3-342. Determination of terms after consolidation of elementary districts.

Whenever the trustees are elected at one regular school election under the circumstances described in 20-3-302(2)(a), the members who are elected shall draw by lot to determine their terms of office. The terms of office by trustee position must be:

- (1) three for 3 years, two for 2 years, and two for 1 year in a first-class elementary district;
- (2) two for 3 years, two for 2 years, and one for 1 year in second-class elementary districts and third-class elementary districts having five trustee positions; or
- (3) one for 3 years, one for 2 years, and one for 1 year in a third-class elementary district having three trustee positions.

History: En. 75-5908 by Sec. 37, Ch. 5, L. 1971; amd. Sec. 3, Ch. 103, L. 1975; R.C.M. 1947, 75-5908; amd. Sec. 8, Ch. 219, L. 1997.

20-3-343. Determination of terms after change of district classification. Whenever the change of an elementary district classification requires the addition of trustee positions to the trustees of the district under the circumstance described in 20-3-302(2)(c), the members who are elected shall draw by lot to determine their terms of office, which must be one for 3 years and one for 2 years.

History: En. 75-5910 by Sec. 39, Ch. 5, L. 1971; R.C.M. 1947, 75-5910; amd. Sec. 9, Ch. 219, L. 1997.

Cross-References

Elementary district classification, 20-6-201.

20-3-344. Nomination of candidates by petition in first-class elementary district.

Except as provided in 20-3-338, any 20 electors, qualified under the provisions of 20-20-301, of any first-class elementary district may nominate by petition as many trustee candidates as there are trustee positions subject to election at the ensuing election. The name of each person nominated for candidacy shall be submitted to the clerk of the district not less than 40 days before the regular school election day at which he is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated shall also be indicated. The election shall be conducted with the ballot as specified in 20-3-306.

History: En. 75-5914.1 by Sec. 1, Ch. 165, L. 1973; R.C.M. 1947, 75-5914.1; amd. Sec. 5, Ch. 539, L. 1987.

20-3-345 through 20-3-350 reserved.

20-3-351. Number of trustee positions in high school districts. (1) Except as provided in 20-3-352(3) and subsection (2) of this section, the trustees of a high school district must be composed of:

(a) the trustees of the elementary district in which the high school building is located or, if there is more than one elementary district in which the operating high school buildings are located, the trustees of the elementary district in which the operating high school building that was first constructed is located; and

(b) the additional trustee positions determined in accordance with 20-3-352(2).

(2) There must be seven trustee positions for each county high school.

History: En. 75-5902 by Sec. 31, Ch. 5, L. 1971; amd. Sec. 1, Ch. 103, L. 1975; R.C.M. 1947, 75-5902(2), (3); amd. Sec. 3, Ch. 528, L. 1991; amd. Sec. 10, Ch. 219, L. 1997; amd. Sec. 1, Ch. 91, L. 2005.

Cross-References

Definition of elementary and high school districts, 20-6-101.

Elementary district classification, 20-6-201.

High school district classification, 20-6-301.

20-3-352. Request and determination of number of high school district additional trustee positions — nonvoting trustee. (1) As provided in 20-3-351(1)(b), a high school district, except a county high school district, may have additional trustee positions when the

trustees of a majority of the elementary districts with territory located in the high school district, but without equitable representation on the high school district trustees under the provision of 20-3-351(1)(a), request the establishment of additional trustee positions under the provisions of subsection (2) or when the electors approve an alternative method of electing members of the board of trustees under the provisions of subsection (3).

(2) A request for additional trustee positions must be made to the county superintendent by a resolution of the trustees of each elementary district. When a resolution has been received from a majority of the elementary districts without representation on the high school district trustees, the county superintendent shall determine the number of additional trustee positions for the affected high school district in accordance with the following procedure:

(a) The taxable valuation of the elementary district that has its trustees placed on the high school trustees must be divided by the number of positions on the trustees of the elementary district to determine the taxable valuation per trustee position.

(b) The taxable valuation used for the calculation in subsection (2)(a) must be subtracted from the taxable valuation of the high school district to determine the taxable valuation of the territory of the high school district without representation on the high school district trustees.

(c) The taxable valuation determined in subsection (2)(b) must be divided by the taxable valuation per trustee position calculated in subsection (2)(a). The resulting quotient must be rounded off to the nearest whole number, except that when the quotient is less than 0.5, at least one nonvoting trustee position must be established for the territory without representation on the high school district board of trustees under the provision of 20-3-351(1)(a).

(d) Except for a nonvoting trustee position, the number determined in subsection (2)(c) must be the number of additional trustee positions, except that the number of additional trustee positions may not exceed four in a first- or second-class high school district or two in a third-class high school district except when two-thirds or more of the high school enrollment of the high school district and two-thirds or more of the taxable valuation of the high school district are located outside of the elementary district that has its trustees placed on the high school district trustees. When this situation exists, three additional trustees must be elected from the elementary school districts in which the high school is not located and one additional trustee must be elected at large in the high school district.

(3) (a) If more than half of the electors of the high school district reside outside the territory of the elementary school district in which the high school district buildings are located, at least 10% of the electors of the high school district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent, requesting an election to consider a proposition on the question of establishing one of the following alternative methods of electing the members of the high school district board of trustees:

(i) one trustee must be elected from each elementary school district with territory included in the high school district and two or three trustees must be elected at large in the high school district, whichever number results in an odd number of members on the board of trustees; or

(ii) the county superintendent shall establish four trustee nominating districts within the high school district but outside the territory of the elementary school district in which the high school buildings are located. One trustee must be elected from each trustee nominating district and three trustees must be elected from the elementary district in which the high school buildings are located, for a total of seven trustees on the high school district board of trustees. Trustees elected from the elementary district in which the high school buildings are located shall serve on both the high school district board of trustees and on the elementary school district board of trustees.

(b) (i) When the county superintendent receives a valid petition, the county superintendent shall order the trustees of the high school district to conduct an election on the next regular school election day on the proposition allowed under the provisions of subsection (3)(a).

(ii) If the electors of the district approve a proposition to establish the alternative method of electing the high school district board of trustees, the county superintendent shall order that the members of the board of trustees be elected according to subsection (3)(a) at the next regular school election.

(c) Whenever the trustees are elected at one regular election under subsection (3)(b), the members who are elected shall draw by lot to determine their terms of office. The terms of office by trustee position must be divided as equally as practicable among 1-, 2-, and 3-year terms.

(d) A petition to call an election for the purposes of subsection (3) may not be submitted to the county superintendent more than one time in each 5-year period.

History: En. 75-5903 by Sec. 32, Ch. 5, L. 1971; amd. Sec. 1, Ch. 328, L. 1973; R.C.M. 1947, 75-5903; amd. Sec. 1, Ch. 528, L. 1991; amd. Sec. 11, Ch. 219, L. 1997; amd. Sec. 1, Ch. 151, L. 2001.

20-3-353. Establishment and purpose of trustee nominating districts. (1) After the county superintendent has determined the number of additional trustee positions, he shall establish trustee nominating districts in that portion of the high school district without representation on the high school trustees. There shall be one trustee nominating district for each additional trustee position, except the additional trustee-at-large. Unless it is impossible, the trustee nominating district boundaries shall be coterminous with elementary district boundaries.

(2) The purpose of the trustee nominating district shall be to establish a representative district for the nomination and election of a resident of such district to be an additional member of the trustees of a high school district. The electors qualified to vote in the high school district under the provisions of 20-20-301 and who reside in the trustee nominating district shall be the only electors who may vote for the additional trustee representing such district. They also shall be permitted to vote for a trustee position at large, if there is one, but for no other high school trustee position.

(3) Any additional trustee position established under the provisions of this section shall be filled in a manner prescribed under the provisions of 20-3-309. Each additional trustee position filled by appointment under this section shall be subject to election at the next regular school election.

History: En. 75-5904 by Sec. 33, Ch. 5, L. 1971; R.C.M. 1947, 75-5904.

Cross-References

Regular school election day and special school elections, 20-20-105.

20-3-354. Redetermination of additional trustee positions and subsequent adjustments. Whenever there is a revision of the taxable valuation of the high school district or the elementary districts within it or there is a reclassification of the elementary district which has its trustees placed on the high school district board of trustees, the county superintendent shall redetermine the number of additional trustee positions for the high school district in accordance with 20-3-352. If there is a change in the allowable number of additional trustee positions, the county superintendent shall reestablish the trustee nominating districts in accordance with 20-3-353. If the number of additional trustee positions is less than the previous number of positions, the county superintendent shall designate which present additional positions are to terminate upon his order reestablishing the trustee nominating districts. If the number of additional trustee positions is more than the previous number of positions, such additional trustee positions shall be filled in the manner prescribed under the provisions of 20-3-309. Each additional trustee position filled by appointment under this section shall be subject to election at the next regular school election.

History: En. 75-5905 by Sec. 34, Ch. 5, L. 1971; R.C.M. 1947, 75-5905; amd. Sec. 2, Ch. 384, L. 1979.

20-3-355. Determination of terms after establishment or reestablishment of additional trustee positions. (1) Whenever all of the additional trustee positions are subject to election at one regular school election under the circumstance described in 20-3-302(2)(b), the members who are elected shall draw by lot to determine their terms of office. The terms of office by number of members elected must be:

- (a) two for 3 years, if four are elected;
- (b) one for 3 years, if one, two, or three are elected;
- (c) one for 2 years, if two, three, or four are elected; and
- (d) one for 1 year, if three or four are elected.

(2) Whenever the reestablishment of the additional trustee positions for a high school district under the provisions of 20-3-354 results in an increased number of additional trustee positions, the members who are elected at the next regular school election shall draw by lot to

determine their terms of office and the terms must be determined in accordance with the additional trustee terms prescribed in this section.

History: En. 75-5909 by Sec. 38, Ch. 5, L. 1971; R.C.M. 1947, 75-5909; amd. Sec. 12, Ch. 219, L. 1997.

20-3-356. Membership of elected trustees of county high school district and nomination of candidates. (1) The trustees of a county high school district must include the following:

(a) four trustee positions filled by members residing in the elementary district where the county high school building is located; and

(b) three trustee positions filled by members one of whom resides in each of the three trustee nominating districts in the territory of the high school district outside of the elementary district where the county high school building is located. The county superintendent shall establish the nominating districts, and, unless it is impossible, the districts must have coterminous boundaries with elementary district boundaries.

(2) The provisions of 20-3-305 govern the nomination of candidates for the trustee election prescribed in this section.

History: En. 75-5924 by Sec. 53, Ch. 5, L. 1971; amd. Sec. 4, Ch. 122, L. 1975; R.C.M. 1947, 75-5924; amd. Sec. 13, Ch. 219, L. 1997.

Cross-References

Rules for determining residence, 1-1-215.

Transactions after approved county high school unification, 20-6-313.

20-3-357 through 20-3-360 reserved.

20-3-361. Joint board of trustees organization and voting membership. (1) The board of trustees of two or more school districts may form a joint board of trustees for the purpose of coordinating any educational program or support service of the districts. A joint board of trustees may coordinate only those programs and services agreed to by the participating boards of trustees.

(2) When a joint board of trustees is formed, all of the members of the districts' trustees shall be members of the joint board of trustees and each member shall have the right to participate in the meetings, but voting on matters considered by the joint board shall be limited by the provisions of this section.

(3) At the first meeting of the joint board of trustees, there shall be a chairman of the joint board of trustees selected from among the membership. A secretary of the joint board shall be selected from the membership. The chairman, when selected as a voting member, shall not be disqualified from voting because of his position of chairman of the board. The secretary shall not be a voting member except that he shall cast the deciding vote when three successive ballots have resulted in a tie vote of the joint board of trustees.

(4) The voting membership of the joint board of trustees shall be equalized among the trustee membership of the participating districts. After the selection of the chairman and the secretary, if necessary, the voting membership shall be:

(a) all of the membership of the board of trustees of the smallest class of district, according to 20-6-201 or 20-6-301, unless one of its members is selected as secretary, in which case such member shall not be a voting member; and

(b) the members of the board of trustees of the other district or districts who are selected by such trustees as voting members of the joint board in a number equal to the number of voting members of the district as established under subsection (4)(a) above. The names of the voting membership selected by the trustees shall be submitted in writing to the secretary of the board and shall be the only members of such district's trustees eligible to vote on joint board matters unless such list is revised in writing by the trustees.

(5) Each voting member shall be entitled to cast one vote, individually, upon every matter submitted to the joint board for a vote.

(6) A joint board must remain in existence for at least 1 school year and may not be dissolved until the end of a school year.

History: En. 75-5928 by Sec. 57, Ch. 5, L. 1971; amd. Sec. 6, Ch. 122, L. 1975; R.C.M. 1947, 75-5928; amd. Sec. 1, Ch. 308, L. 1987.

Cross-References

Authority of joint board to operate junior high school, 20-6-505.

Funding for special education cooperatives or joint boards, 20-7-457.

20-3-362. Powers of joint board of trustees. (1) When a joint board of trustees is formed as provided by 20-3-361, it shall have the power to:

- (a) jointly employ a district superintendent under the provisions of 20-4-401;
- (b) jointly employ teachers and specialists under the provisions of 20-4-201;
- (c) open a junior high school under the provisions of 20-6-505 if the trustees of a county high school and the trustees of an elementary district have formed a joint board of trustees;
- (d) prescribe and administer joint administrative policy;
- (e) jointly provide any program or service authorized under 20-3-324, including any joint provision of special education services as provided in 20-7-457; and
- (f) prorate all items of joint expense among the school districts, provided that a controversy over any decision by the joint board to prorate joint costs may, within 30 days, be appealed by the trustees of any district to the superintendent of public instruction for a final decision as to what constitutes a fair and just proration of the cost.

(2) The joint board of trustees shall not have the power to transact business that is not specifically related to the joint administration of the districts.

History: En. 75-5929 by Sec. 58, Ch. 5, L. 1971; R.C.M. 1947, 75-5929; amd. Sec. 3, Ch. 511, L. 1979; amd. Sec. 2, Ch. 308, L. 1987; amd. Sec. 1, Ch. 343, L. 1989.

20-3-363. Interdistrict agreements — fund transfers. (1) The trustees of any two school districts that have unified pursuant to 20-6-312, any two school districts that have created a joint board of trustees pursuant to 20-3-361, or a high school district and any elementary school district associated with that high school district may enter into an interdistrict agreement to provide for the joint funding and operation and maintenance of both districts upon the terms and conditions as may be mutually agreed to by the districts subject to the conditions of this section. An agreement must be approved by the board of trustees of both districts by February 1 of the current fiscal year.

(2) All expenditures in support of the interdistrict agreement may be made from the interlocal cooperative fund as specified in 20-9-703 and 20-9-704. Each district may transfer funds into the interlocal cooperative fund from the general fund of the district. Transfers to the interlocal cooperative fund from each school district are limited to an amount not to exceed the direct state aid in support of the respective school district's general fund and must be completed by February 1 of the current fiscal year.

(3) Expenditures from the interlocal cooperative fund under this section are limited to those expenditures that are permitted by law and that are within the final budget for the general fund from which the transfer was made.

History: En. Sec. 21, Ch. 462, L. 2005.

CHAPTER 4 TEACHERS, SUPERINTENDENTS, AND PRINCIPALS

Part 1 — Certification of Teaching and Supervisory Personnel

- 20-4-101. System and definitions of teacher and specialist certification — student teacher exception.
- 20-4-102. Board of public education policies.
- 20-4-103. Issuance of teacher or specialist certificates.
- 20-4-104. Qualifications.
- 20-4-105. Repealed.
- 20-4-106. Classifications of teacher and specialist certificates.
- 20-4-107. Outstanding teacher certificates.
- 20-4-108. Term of teacher and specialist certificates — renewal.
- 20-4-109. Fees for teacher and specialist certificates.
- 20-4-110. Letter of reprimand, suspension, revocation, and denial of certificate.
- 20-4-111. Emergency authorization of employment.
- 20-4-112. Access to materials — superintendent of public instruction.
- 20-4-113. Access to criminal justice information.
- 20-4-114. Penalty for failure to report.
- 20-4-115 through 20-4-120 reserved.
- 20-4-121. Interstate agreement on qualification of educational personnel.
- 20-4-122. Designated official for purposes of interstate agreement.
- 20-4-123. Preservation and publication of contracts made pursuant to interstate agreement.
- 20-4-124 through 20-4-130 reserved.

- 20-4-131. Definitions.
- 20-4-132. Meetings — assistance.
- 20-4-133. Duties of the council.
- 20-4-134. Professional stipends for teachers certified by national board for professional teaching standards.

Part 2 — Teacher Employment—Tenure

- 20-4-201. Employment of teachers and specialists by contract.
- 20-4-202. Teacher and specialist certification registration.
- 20-4-203. Teacher tenure.
- 20-4-204. Termination of tenure teacher services.
- 20-4-205. Notification of teacher reelection — acceptance.
- 20-4-206. Notification of nontenure teacher reelection — acceptance — termination.
- 20-4-207. Dismissal of teacher under contract.
- 20-4-208. Transfer from administrative position.
- 20-4-209 and 20-4-210 reserved.
- 20-4-211. Repealed.
- 20-4-212. Repealed.
- 20-4-213. Repealed.
- 20-4-214. Repealed.

Part 3 — Teachers' Powers, Duties, and Privileges

- 20-4-301. Duties of teacher — nonpayment for failure to comply.
- 20-4-302. Discipline and punishment of pupils — definition of corporal punishment — penalty — defense.
- 20-4-303. Abuse of teachers.
- 20-4-304. Attendance at instructional and professional development meetings.

Part 4 — District Superintendent and Principal

- 20-4-401. Appointment and dismissal of district superintendent or county high school principal.
- 20-4-402. Duties of district superintendent or county high school principal.
- 20-4-403. Powers and duties of principal.

Part 5 — Quality Educator Loan Assistance Program

- 20-4-501. Quality educator loan assistance program.
- 20-4-502. Definitions.
- 20-4-503. Critical quality educator shortages.
- 20-4-504. Loan repayment assistance.
- 20-4-505. Loan repayment assistance documentation.
- 20-4-506. Funding — priorities.

Chapter Cross-References

Teachers' retirement system, Title 19, ch. 20.

Part 1

Certification of Teaching and Supervisory Personnel

20-4-101. System and definitions of teacher and specialist certification — student teacher exception. (1) In order to establish a uniform system of quality education and to ensure the maintenance of professional standards, a system of teacher and specialist certification shall be established and maintained under the provisions of this title and no person shall be permitted to teach in the public schools of the state until he has obtained a teacher certificate or specialist certificate or the district has obtained an emergency authorization of employment from the state.

(2) As used in this part, "teacher or specialist certificate" means a certificate issued or applied for under 20-4-106. The term "teacher or specialist" refers to a person certified under 20-4-106.

(3) The above certification requirement shall not apply to a student teacher who is hereby defined as a student enrolled in an institution of higher learning approved by the board of regents of higher education for teacher training and who is jointly assigned by such institution of higher learning and the governing board of a district or a public institution to perform practice teaching in a nonsalaried status under the direction of a regularly employed and certificated teacher.

(4) A student teacher, while serving such nonsalaried internship under the supervision of a certificated teacher, shall be accorded the same protection of the laws as that accorded a certificated teacher and shall, while acting as such student teacher, comply with all rules of the

governing board of the district or public institution and the applicable provisions of 20-4-301 relating to the duties of teachers.

History: En. 75-6001 by Sec. 71, Ch. 5, L. 1971; amd. Sec. 1, Ch. 396, L. 1973; R.C.M. 1947, 75-6001; amd. Sec. 4, Ch. 511, L. 1979; amd. Sec. 2, Ch. 227, L. 1987.

Cross-References

Duty of Board of Public Education to adopt teacher certification policies, 20-2-121.

Health education course, including drug and alcohol abuse instruction, Title 20, ch. 25, part 6.

20-4-102. Board of public education policies. To effect an orderly and uniform system of teacher and specialist certification, the board of public education shall, upon the recommendation of the superintendent of public instruction and in accordance with the provisions of this title, prescribe and adopt policies for the issuance of teacher or specialist certificates. Such policies shall provide for:

(1) reasonable training and experience requirements for teacher, specialist, supervisor, and administrative certificates and endorsements thereon as provided by the certification classification in 20-4-106;

(2) the renewal of teacher or specialist certificates based on the same conditions prescribed for the initial issuance of certificates;

(3) the conduct of hearings on teacher or specialist certification revocation, suspension, or denial;

(4) the issuance of emergency authorization to a district to employ a person who is not the holder of a valid teacher certificate as an instructor of pupils; and

(5) any other policy, not inconsistent with the law, which is necessary for the proper operation of a system of teacher and specialist certification.

History: En. 75-6002 by Sec. 72, Ch. 5, L. 1971; R.C.M. 1947, 75-6002; amd. Sec. 5, Ch. 511, L. 1979.

Cross-References

Duty of Board of Public Education to adopt teacher certification policies, 20-2-121.

20-4-103. Issuance of teacher or specialist certificates. The superintendent of public instruction shall issue all teacher and specialist certificates in the state of Montana. In issuing teacher or specialist certificates, the superintendent of public instruction shall comply with the provisions of this title and the teacher and specialist certification policies adopted by the board of public education. The superintendent of public instruction shall not issue a teacher or specialist certificate to any person who does not satisfy the qualifications or other requirements of this title and of the board of public education policies for teacher or specialist certification.

History: En. 75-6003 by Sec. 73, Ch. 5, L. 1971; R.C.M. 1947, 75-6003; amd. Sec. 6, Ch. 511, L. 1979.

Cross-References

Duty of Board of Public Education to adopt teacher certification policies, 20-2-121.

Duty to certify special education teachers, 20-7-403.

20-4-104. Qualifications. (1) A person may be certified as a teacher when he satisfies the following qualifications:

(a) He is 18 years of age or older.

(b) He is of good moral and professional character.

(c) He has completed the teacher education program of a unit of the Montana university system or an essentially equivalent program at an accredited institution of equal rank and standing as that of any unit of the Montana university system, and his training is evidenced by at least a bachelor's degree and a certification of the completion of the teacher education program, except as provided for in 20-4-106(1)(d).

(d) He has subscribed to the following oath or affirmation before an officer authorized by law to administer oaths:

"I solemnly swear (or affirm) that I will support The Constitution of the United States of America and The Constitution of the State of Montana."

(2) Any person may be certified as a specialist when he satisfies the requirements of subsections (1)(a) and (1)(b) and the requirement for a specialist certificate provided in 20-4-106(2).

History: En. 75-6004 by Sec. 74, Ch. 5, L. 1971; R.C.M. 1947, 75-6004; amd. Sec. 7, Ch. 511, L. 1979; amd. Sec. 1, Ch. 165, L. 1981; amd. Sec. 1, Ch. 266, L. 1983; amd. Sec. 1, Ch. 257, L. 1991.

Cross-References

Constitutional oath of office, Art. III, sec. 3, Mont. Const.
Oaths, Title 1, ch. 6, part 1.

20-4-105. Repealed. Sec. 2, Ch. 165, L. 1981.

History: En. 75-6005 by Sec. 75, Ch. 5, L. 1971; R.C.M. 1947, 75-6005; amd. Sec. 8, Ch. 511, L. 1979.

20-4-106. Classifications of teacher and specialist certificates. (1) The superintendent of public instruction shall issue teacher certificates and the board of public education shall adopt teacher certification policies on the basis of the following classifications of teacher certificates:

(a) The class 1 professional certificate may be issued to an otherwise qualified applicant who has completed a teacher education program which includes a bachelor's degree and a minimum of 1 year of study beyond such degree in a unit of the Montana university system or an equivalent institution. The professional certificate may be endorsed for elementary instruction, secondary instruction, or both, and for specified subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher certification endorsement.

(b) The class 2 standard certificate may be issued to an otherwise qualified applicant who has completed a 4-year teacher education program and who has been awarded a bachelor's degree by a unit of the Montana university system or an equivalent institution. The standard certificate may be endorsed for elementary instruction, secondary instruction, or both, and for specified subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher certification endorsement.

(c) The class 3 administrative and supervisory certificate may be issued to an otherwise qualified applicant who is eligible for a teacher certificate endorsed for teaching in the school or schools in which he would be an administrator or he would supervise. The applicant also shall possess the training and experience required by the policies of the board of public education for an endorsement as superintendent, principal, or supervisor.

(d) The class 4 vocational, recreational, or adult education certificate may be issued to an otherwise qualified applicant who has the qualifications of training and experience required by the United States office of education or the qualifications required by the special needs of the several vocational, recreational, or adult education fields and who can qualify under the policy of the board of public education for the issuance of this classification of teacher certification.

(e) The class 5 provisional certificate may be issued to an otherwise qualified applicant who can provide satisfactory evidence of his intent to qualify in the future for a class 1 or a class 2 certificate and who has completed a 4-year college program or its equivalent and holds a bachelor's degree from a unit of the Montana university system or its equivalent. The provisional certificate may be endorsed for elementary instruction, secondary instruction, or both, and for special subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher or specialist certification endorsement.

(2) The superintendent of public instruction shall issue specialist certificates, and the board of public education shall adopt specialist certification policies. The specialist certificate may be issued to an otherwise qualified applicant who has the training, experience, and license required under the standards of the board of public education for the certification of a profession other than the teaching profession.

(3) For purposes of evaluating the qualifications of applicants for either teacher or specialist certificates, a year means the instructional period consisting of three quarters or two semesters or other terms which are recognized as an academic year by any unit of the Montana university system or equivalent institution.

History: En. 75-6006 by Sec. 76, Ch. 5, L. 1971; R.C.M. 1947, 75-6006; amd. Sec. 9, Ch. 511, L. 1979; amd. Sec. 1, Ch. 175, L. 1983.

Cross-References

Duty of Board of Public Education to adopt certification policies, 20-2-121.
Duty of Superintendent of Public Instruction to certify special education teachers, 20-7-403.

20-4-107. Outstanding teacher certificates. (1) No provisions of this title shall affect or impair the validity of any certificate that is in force on January 26, 1971, or the rights and

privileges of the holders by virtue thereof, except that any certificates may be suspended or revoked for any of the causes and by the procedures provided by law.

(2) Any holder of an elementary school standard certificate issued prior to July 1, 1959, under the previous statute and in force on July 1, 1959, shall be eligible for renewal of such certificate in accordance with the policies of the board of public education until the holder qualifies for the class 2 standard certificate as provided in 20-4-106.

(3) Any holder of a class 5 certificate in force on June 30, 1966, or issued between July 1, 1966, and December 31, 1966, shall be eligible for renewal of such certificate in accordance with the policies of the board of public education until the holder qualifies for the class 2 standard certificate as provided in 20-4-106.

History: En. 75-6007 by Sec. 77, Ch. 5, L. 1971; R.C.M. 1947, 75-6007.

20-4-108. Term of teacher and specialist certificates — renewal. (1) A teacher or specialist certificate issued by the superintendent of public instruction must bear the dates of issue and validity and is valid for a term of 5 school fiscal years, except that a class 5 provisional certificate is valid for the number of years, up to a maximum of 5 years, provided by the policies of the board of public education. The period of validity for any certificate begins on July 1 immediately preceding the date of issue, except that a teacher or specialist who applies for certification after January 1 may, upon request, have the period of validity of the certificate begin on July 1 following the date of application.

(2) Teacher and specialist certificates must be renewed for similar periods of time on the basis of the board of public education policies for teacher and specialist certification renewal.

History: En. 75-6008 by Sec. 78, Ch. 5, L. 1971; amd. Sec. 1, Ch. 171, L. 1977; R.C.M. 1947, 75-6008; amd. Sec. 10, Ch. 511, L. 1979; amd. Sec. 1, Ch. 224, L. 1983; amd. Sec. 1, Ch. 58, L. 1995.

20-4-109. Fees for teacher and specialist certificates. (1) A person applying for the issuance or renewal of a teacher or specialist certificate shall pay a fee not to exceed \$6 for each school fiscal year that the certificate is valid. In addition to this fee, a person who has never held any class of Montana teacher or specialist certificate or for whom an emergency authorization of employment has never been issued shall pay a filing fee of \$6. The fees must be paid to the superintendent of public instruction, who shall deposit the fees with the state treasurer to the credit of the state special revenue fund account, created in subsection (2), to be used in the following manner:

(a) \$4 for expenses of the certification standards and practices advisory council created in 2-15-1522;

(b) \$2 to the board of public education and the certification standards and practices advisory council for activities in support of the constitutional and statutory duties of the board of public education and the certification standards and practices advisory council.

(2) There is an account in the state special revenue fund. Money from fees for teacher or specialist certificates required in subsection (1) must be deposited in the account.

History: En. 75-6009 by Sec. 79, Ch. 5, L. 1971; R.C.M. 1947, 75-6009; amd. Sec. 11, Ch. 511, L. 1979; amd. Sec. 5, Ch. 465, L. 1987; amd. Sec. 1, Ch. 103, L. 1989; amd. Sec. 4, Ch. 628, L. 1989; amd. Sec. 2, Ch. 495, L. 1991; amd. Sec. 26, Ch. 509, L. 1995; amd. Sec. 1, Ch. 165, L. 1999; amd. Sec. 1, Ch. 173, L. 2003.

20-4-110. Letter of reprimand, suspension, revocation, and denial of certificate.

(1) The board of public education may issue a letter of reprimand or may suspend or revoke the teacher, administrator, or specialist certificate of any person for the following reasons:

(a) making any statement of material fact in applying for a certificate that the applicant knows to be false;

(b) any reason that would have required or authorized the denial of the teacher, administrator, or specialist certificate to the person if it had been known at the time the certificate was issued;

(c) incompetency;

(d) gross neglect of duty;

(e) conviction of, entry of a guilty verdict, a plea of guilty, or a plea of no contest to a criminal offense involving moral turpitude in this state or any other state or country;

(f) immoral conduct related to the teaching profession;

(g) substantial and material nonperformance of the employment contract between the teacher, administrator, or specialist and the trustees of a school or school district without good cause or the written consent of the trustees; or

(h) denial, revocation, suspension, or surrender of a teacher, administrator, or specialist certificate in another state for any reason constituting grounds for similar action in this state.

(2) The board may initiate proceedings under this section if a request for the suspension or revocation of the teacher, administrator, or specialist certificate of any person is made to it by:

(a) the trustees of a district as to a teacher, administrator, or specialist employed by that school or school district within the 12 months immediately preceding receipt of the request by the board of public education; or

(b) the superintendent of public instruction.

(3) (a) If the employment relationship between a school district and a teacher, administrator, or specialist is terminated or not renewed or if a teacher, administrator, or specialist resigns to prevent termination or nonrenewal because the trustees have reason to believe that the teacher, administrator, or specialist engaged in conduct described in subsection (1)(e) or (1)(f), the trustees shall make a written report to the superintendent of public instruction describing the circumstances of the termination, nonrenewal, or resignation.

(b) The superintendent shall review the report and any supporting evidence included in the report and may conduct further investigation. If the superintendent is satisfied that sufficient grounds exist, the superintendent may request action by the board of public education under subsection (1). The request must be brought within 1 year after discovery of the events that gave rise to the report.

(c) The trustees and the superintendent shall ensure the confidentiality of the report.

(d) The trustees and the superintendent and their agents and employees are immune from suit for actions taken in good faith under this section with respect to the report.

(4) The board shall give a 30-day written notification to any person when the board intends to consider a letter of reprimand or the suspension or revocation of a certificate. Service of the notice must be accomplished by sending the notification by registered mail to the last address that the person has provided to the school district or the superintendent of public instruction.

(5) The board shall conduct an investigation of the reasons for the suspension or revocation charge and then, if the investigation warrants further action, conduct a hearing in the manner provided by board policies. At the hearing, the board shall afford the person an opportunity for defense against the charge.

(6) After a hearing, the board may place a written reprimand in the person's certification file or may suspend or revoke the person's teacher, administrator, or specialist certificate, except that in the case of a first violation under subsection (1)(g), the maximum penalty is a 2-year suspension of the person's certificate. The board may, upon a request by a school district, inform the school district that a person's certification file includes a letter of reprimand, but the board may not provide a copy of the letter without first determining that the public's right to know outweighs the person's right to privacy.

(7) Whenever the superintendent of public instruction denies the issuance or the renewal of a teacher, administrator, or specialist certificate, the applicant may appeal the denial to the board of public education. The board shall hear the appeal in the same manner provided in this section for suspension or revocation and in accordance with the policies of the board. The decision of the board is final.

History: En. 75-6010 by Sec. 80, Ch. 5, L. 1971; R.C.M. 1947, 75-6010; amd. Sec. 1, Ch. 240, L. 1979; amd. Sec. 12, Ch. 511, L. 1979; amd. Sec. 1, Ch. 227, L. 1987; amd. Sec. 1, Ch. 382, L. 1993; amd. Sec. 1, Ch. 486, L. 1995.

Cross-References

False swearing, 45-7-202.

Unsworn falsification to authorities, 45-7-203.

20-4-111. Emergency authorization of employment. (1) A district may request from the superintendent of public instruction an emergency authorization of employment for a person who is not the holder of a valid teacher or specialist certificate as an instructor of pupils when the district cannot secure the services of a person holding a valid certificate. The person must have previously held a valid teacher or specialist certificate or shall meet the standards of preparation

prescribed by the policies of the board of public education for and during an emergency. Emergency authorization of employment must indicate:

- (a) the district to which the authorization is issued;
- (b) the person whom the district is authorized to employ;
- (c) the endorsement for elementary or secondary instruction and the specific subject fields for which authorization to employ the person is given; and
- (d) the school fiscal year for which the emergency authorization of employment is given.

(2) Emergency authorization of employment of a person is valid for the school fiscal year identified on the authorization and may be renewed in accordance with the board of public education policies. A fee not to exceed \$6 and, if no teacher or specialist certificate or emergency authorization of employment has ever been issued for the person, a filing fee of \$6 must be paid for the issuance of an emergency authorization of employment. The superintendent of public instruction shall deposit the fees with the state treasurer to the credit of the general fund.

(3) Emergency authorization of employment of a person may be revoked for good cause in accordance with the provisions of 20-4-110.

History: En. 75-6011 by Sec. 81, Ch. 5, L. 1971; R.C.M. 1947, 75-6011; amd. Sec. 13, Ch. 511, L. 1979; amd. Sec. 26, Ch. 83, L. 1989; amd. Sec. 2, Ch. 103, L. 1989; amd. Sec. 3, Ch. 495, L. 1991.

20-4-112. Access to materials — superintendent of public instruction. The superintendent of public instruction has access to all material considered by or available to the school or school district that may be relevant to an allegation that a teacher, administrator, or specialist has engaged in conduct described in 20-4-110(1)(e) or (1)(f) or that may lead to the discovery of relevant evidence.

History: En. Sec. 2, Ch. 382, L. 1993.

20-4-113. Access to criminal justice information. (1) Either the trustees of a school district or the superintendent of public instruction may apply to a district court pursuant to 44-5-302 to review confidential criminal justice information that is relevant to the investigation of grounds for suspension or revocation of a teacher, administrator, or specialist certificate under 20-4-110.

(2) The district court shall provide the trustees or the superintendent of public instruction access to any confidential criminal justice information that is relevant to an investigation into possible grounds for suspension or revocation of a teacher, administrator, or specialist certificate. The court shall issue a protective order to protect the confidentiality of the information released.

History: En. Sec. 3, Ch. 382, L. 1993.

20-4-114. Penalty for failure to report. The failure of a school trustee to report as required in 20-4-110 constitutes official misconduct within the meaning of 2-16-603.

History: En. Sec. 4, Ch. 382, L. 1993.

20-4-115 through 20-4-120 reserved.

20-4-121. Interstate agreement on qualification of educational personnel. The interstate agreement on qualification of educational personnel is enacted into law and entered into with all jurisdictions legally joining therein in the form substantially as follows:

Article I. Purpose — Findings — Policy

(1) The states party to this agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the states party to it and to authorize specific interstate educational personnel contracts to achieve that end.

(2) The party states find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their

new locations. Variations from state to state in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other states. As a consequence, a significant number of professionally prepared and experienced educators are lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their states of origin, can increase the available educational resources. Participation in this compact can increase the availability of educational manpower.

Article II. Definitions

As used in this agreement and contracts made pursuant to it, unless the context clearly requires otherwise, the following definitions apply:

- (1) "Educational personnel" means persons who must meet requirements pursuant to state law as a condition of employment in educational programs.
- (2) "Designated state official" means the educational official of a state selected by that state to negotiate and enter into, on behalf of his state, contracts pursuant to this agreement.
- (3) "Accept" or any variant thereof means to recognize and give effect to one or more determinations of another state relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving state.
- (4) "State" means a state, territory, or possession of the United States, the District of Columbia, or the commonwealth of Puerto Rico.
- (5) "Originating state" means a state (and the subdivisions thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.
- (6) "Receiving state" means a state (and the subdivisions thereof) which accept educational personnel in accordance with the terms of a contract made pursuant to Article III.

Article III. Interstate Educational Personnel Contracts

(1) The designated state official of a party state may make one or more contracts on behalf of his state with one or more other party states providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it and the subdivisions of those states with the same force and effect as if incorporated in this agreement. A designated state official may enter into a contract pursuant to this article only with states in which he finds that there are programs of education, certification standards, or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable even though not identical to that prevailing in his own state.

- (2) Any such contract shall provide for:
 - (a) its duration;
 - (b) the criteria to be applied by an originating state in qualifying educational personnel for acceptance by a receiving state;
 - (c) such waivers, substitutions, and conditional acceptance as shall aid the practical effectuation of the contract without sacrifice of basic educational standards; and
 - (d) any other necessary matters.
- (3) No contract made pursuant to this agreement shall be for a term longer than 5 years, but any such contract may be renewed for like or lesser periods.
- (4) Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this agreement shall require acceptance by a receiving state of any persons qualified because of successful completion of a program prior to January 1, 1954.
- (5) The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving state.

(6) A contract committee composed of the designated state officials of the contracting states or their representatives shall keep the contract under continuous review, study means of improving its administration, and report not less than once a year to the heads of the appropriate education agencies of the contracting states.

Article IV. Approved and Accepted Programs

(1) Nothing in this agreement shall be construed to repeal or otherwise modify any law or regulation of a party state relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that state.

(2) To the extent that contracts made pursuant to this agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

Article V. Interstate Cooperation

The party states agree that:

(1) they will, so far as practicable, prefer the making of multilateral contracts pursuant to Article III of this agreement; and

(2) they will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

Article VI. Agreement Evaluation

The designated state officials of any party states may meet from time to time as a group to evaluate progress under the agreement and to formulate recommendations for changes.

Article VII. Other Arrangements

Nothing in this agreement shall be construed to prevent or inhibit other arrangements or practices of any party state or states to facilitate the interchange of educational personnel.

Article VIII. Effect — Withdrawal

(1) This agreement shall become effective when enacted into law by two states. Thereafter it shall become effective as to any state upon its enactment of this agreement.

(2) Any party state may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until 1 year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

(3) No withdrawal shall relieve the withdrawing state of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

Article IX. Construction — Severability

This agreement shall be liberally construed so as to effectuate the purpose thereof. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any state or of the United States or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement is held to be contrary to the constitution of any state participating therein, the agreement shall remain in full force and effect as to the state affected as to all severable matters.

History: En. 75-6012 by Sec. 1, Ch. 328, L. 1977; R.C.M. 1947, 75-6012.

20-4-122. Designated official for purposes of interstate agreement. The designated state official for this state is the state superintendent of public instruction. The state superintendent of public instruction shall enter into contracts pursuant to Article III of the agreement only after approval of the specific text thereof by the board of public education.

History: En. 75-6013 by Sec. 2, Ch. 328, L. 1977; R.C.M. 1947, 75-6013.

20-4-123. Preservation and publication of contracts made pursuant to interstate agreement. True copies of all contracts made on behalf of this state pursuant to the agreement shall be kept on file in the office of the state superintendent of public instruction. The state superintendent of public instruction shall publish all such contracts in convenient form.

History: En. 75-6014 by Sec. 3, Ch. 328, L. 1977; R.C.M. 1947, 75-6014.

20-4-124 through 20-4-130 reserved.

20-4-131. Definitions. As used in 2-15-1522 and 20-4-131 through 20-4-133, the following definitions apply:

(1) "Approved teacher education program" means a program that is offered by an accredited teacher education institution and approved by the board of public education.

(2) "Council" means the certification standards and practices advisory council created in 2-15-1522.

(3) "K-12 specialist" means a person employed by a school district as a librarian, school counselor, or special education or chapter I teacher or a person who has a K-12 endorsement and who is assigned to teach in a classroom that is not self-contained.

(4) "Specialist" means a person employed by a school district as a school psychologist.

History: En. Sec. 1, Ch. 465, L. 1987; amd. Sec. 2, Ch. 124, L. 1991.

20-4-132. Meetings — assistance. (1) The council shall meet quarterly and at other times as may be required for the proper conduct of the business of the council at the call of the chairman.

(2) The council may adopt rules for the conduct of its business.

(3) The council shall keep a record of its proceedings.

(4) The council may request research, administrative, and clerical staff assistance from the board of public education.

(5) The council shall select a chairman and a vice-chairman from its appointed members.

(6) A quorum for a meeting is not less than four council members.

(7) Council members are entitled to travel expenses incurred for each day of attendance at council meetings or in the performance of any duty or service as a council member in accordance with 2-18-501 through 2-18-503.

History: En. Sec. 3, Ch. 465, L. 1987.

20-4-133. Duties of the council. (1) The council shall study and make recommendations to the board of public education in the following areas:

(a) teacher certification standards, including but not limited to precertification training and education requirements and certification renewal requirements and procedures;

(b) administrator certification standards, including but not limited to precertification training and education requirements and certification renewal requirements and procedures;

(c) specialist certification standards, including but not limited to precertification training and education requirements and certification renewal requirements and procedures;

(d) feasibility of establishing standards of professional practices and ethical conduct;

(e) the status and efficacy of approved teacher education programs in Montana; and

(f) policies related to the denial, suspension, and revocation of teacher, administrator, and specialist certification and the appeals process. For the purpose of preparing recommendations in this area, the council is authorized to review the individual cases and files that have been submitted to the board of public education.

(2) The council shall submit a written report annually to the board of public education with its recommendations for the above areas. The council may submit recommendations to the board of public education at other times that the council considers appropriate.

(3) The board of public education shall:

(a) at a regularly scheduled meeting, consider any recommendations and reports of the council; and

(b) approve, disapprove, or modify each recommendation of the council by majority vote of the board.

History: En. Sec. 4, Ch. 465, L. 1987; amd. Sec. 27, Ch. 83, L. 1989.

20-4-134. Professional stipends for teachers certified by national board for professional teaching standards. (1) Pursuant to subsection (4), a one-time stipend of \$3,000 must be provided to each teacher who obtains certification from the national board for professional teaching standards if the teacher is:

(a) a full-time classroom teacher, librarian, or other full-time employee serving in an assignment covered by national board certification assessment;

(b) certified to teach in Montana under the provisions of 20-4-103; and

(c) a full-time employee of:

(i) a Montana public school district, as defined in 20-6-101;

(ii) an education cooperative, as described in 20-7-451;

(iii) the Montana school for the deaf and blind, as described in 20-8-101; or

(iv) a state youth correctional facility, as defined in 41-5-103.

(2) A teacher is eligible for the stipend in the school year beginning July 1 after the teacher obtains certification from the national board for professional teaching standards.

(3) By March 1, the superintendent of public instruction shall distribute stipend payments to each eligible teacher.

(4) The obligation for funding the professional stipend is an obligation of the state. This section may not be construed to require a school district to provide a stipend to a qualifying teacher without a payment from the state to the district. If the funding for professional stipends is less than the total amount for which Montana teachers qualify, the superintendent of public instruction shall prorate the funding to the districts in a manner that provides the same amount of stipend to each qualifying teacher.

History: En. Sec. 1, Ch. 555, L. 2001.

Part 2

Teacher Employment — Tenure

20-4-201. Employment of teachers and specialists by contract. (1) The trustees of any district have the authority to employ any person as a teacher or specialist, but only a person who holds a valid Montana teacher or specialist certificate or for whom an emergency authorization of employment has been issued that qualifies the person to perform the duties prescribed by the trustees for the position of employment. Each teacher or specialist must be employed under written contract, and each contract of employment must be authorized by a proper resolution of the trustees and must be executed in duplicate by the presiding officer of the trustees and the clerk of the district in the name of the district and by the teacher or specialist.

(2) A contract of employment with a teacher or specialist may not require the teacher or specialist to teach more than 5 days a week or on any holiday recognized by 20-1-305. A deduction may not be made from a teacher's or specialist's salary by reason of the fact that a holiday falls on a school day. A teacher's or specialist's contract made in conflict with the 5-days-a-week provision of this section is not enforceable against the teacher or specialist.

(3) Whenever the boards of trustees of two or more school districts form a joint board of trustees under the provisions of 20-3-361 or when the boards of trustees of two or more school districts enter into an interlocal agreement pursuant to Title 7, chapter 11, part 1, to cooperatively share the employment of a teacher or specialist, the joint board of trustees or the boards of trustees of two or more school districts, pursuant to an interlocal agreement, may execute a contract of employment with a teacher or specialist who shall serve the districts. When a contract is executed, the districts shall prorate the compensation provided by the contract on the basis of the total number of instructional hours expended by the teacher or specialist within each district.

(4) Any contract executed under the provisions of this section may contain the oath or affirmation prescribed in 20-4-104, and the teacher or specialist shall subscribe to the oath or affirmation before an officer authorized by law to administer oaths.

History: En. 75-6102 by Sec. 83, Ch. 5, L. 1971; R.C.M. 1947, 75-6102; amd. Sec. 14, Ch. 511, L. 1979; amd. Sec. 3, Ch. 308, L. 1987; amd. Sec. 3, Ch. 318, L. 2001.

Cross-References

Discrimination on account of religious ideas prohibited, Art. II, sec. 4, Mont. Const.

Oaths, Title 1, ch. 6.

Nepotism, Title 2, ch. 2, part 3.

Indian hiring preference within reservations, 2-18-111.

Leave of absence of public employees attending training camp, 10-1-1009.

Reemployment of veterans, Title 10, ch. 2, part 2.

Powers of joint board of trustees, 20-3-362.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference — not applicable to schools, 39-30-103.

20-4-202. Teacher and specialist certification registration. (1) Any person employed as a teacher, specialist, principal, or district superintendent shall register his certificate or the district shall register its emergency authorization of employment for a teacher with the county superintendent of the county wherein he is employed in order to validate his employment status and permit payment under his employment contract. If a teacher or specialist does not register his certificate with the county superintendent within 60 calendar days after he begins to perform his services, he shall not be eligible to receive any further compensation under his contract of employment until he has registered his certificate. After the schools of a district have been open for 60 calendar days in the current school fiscal year, the county superintendent shall notify each district of the county of each teacher or specialist who has registered his current valid certificate, and the district shall not pay any teacher who has not registered his certificate until the county superintendent does notify the district of such registration.

(2) A teacher or specialist employed by a joint district shall register his certificate with the county superintendent of the county in which he is working. A teacher or specialist employed by a special education cooperative shall register his certificate with the county superintendent of the county in which the special education cooperative is based.

History: En. 75-6106 by Sec. 87, Ch. 5, L. 1971; amd. Sec. 3, Ch. 277, L. 1977; R.C.M. 1947, 75-6106; amd. Sec. 15, Ch. 511, L. 1979; amd. Sec. 1, Ch. 330, L. 1987.

Cross-References

Duty of County Superintendent to register teacher or specialist certificates, 20-3-205.

20-4-203. Teacher tenure. (1) Except as provided in 20-4-208, whenever a teacher has been elected by the offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position requiring teacher certification except as a district superintendent or specialist, the teacher is considered to be reelected from year to year as a tenured teacher at the same salary and in the same or a comparable position of employment as that provided by the last-executed contract with the teacher unless the trustees resolve by majority vote of their membership to terminate the services of the teacher in accordance with the provisions of 20-4-204.

(2) The tenure of a teacher with a district may not be impaired upon termination of services of the teacher if the following conditions exist:

(a) the tenure teacher is terminated because the financial condition of the district requires a reduction in the number of teachers employed; and

(b) continued employment rights are provided for in a collectively bargained contract of the district.

(3) (a) For the purposes of subsection (1), "same salary" means the daily rate of pay, excluding benefits and excluding stipends for nonteaching duties, multiplied by the number of days worked under the last-executed contract with the teacher, up to the total number of days funded by the state in the per-ANB entitlements, as provided in 20-9-311, including pupil-instruction-related days. The calculation of daily rate of pay is determined by dividing the salary in the last-executed contract with the teacher for pupil-instruction and pupil-instruction-related days, excluding benefits and excluding stipends for nonteaching duties, by the total number of contracted days under the last-executed contract.

(b) The definition of same salary may be modified if negotiated and agreed to in a collective bargaining agreement executed by the district and the teacher's exclusive representative pursuant to Title 39, chapter 31, or in an individual contract between the district and a teacher in a district in which the teachers have no exclusive representative as provided in Title 39, chapter 31.

(4) Upon receiving tenure, the employment of a teacher may be terminated for good cause.

History: En. 75-6103 by Sec. 84, Ch. 5, L. 1971; amd. Sec. 1, Ch. 49, L. 1971; R.C.M. 1947, 75-6103; amd. Sec. 16, Ch. 511, L. 1979; amd. Sec. 1, Ch. 521, L. 1983; amd. Sec. 1, Ch. 479, L. 1989; amd. Sec. 1, Ch. 204, L. 1991; amd. Sec. 1, Ch. 259, L. 1997; amd. Sec. 2, Ch. 438, L. 1997.

Cross-References

Tenure of teachers employed by cooperatives, 20-7-456.

20-4-204. Termination of tenure teacher services. (1) (a) The following persons may make a recommendation in writing to the trustees of the district for termination of the services of a tenure teacher:

- (i) a district superintendent;
- (ii) in a district without a district superintendent, a principal;
- (iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

(b) The recommendation must state clearly and explicitly the specific reason or reasons leading to the recommendation for termination.

(2) Whenever the trustees of a district receive a recommendation for termination, the trustees shall notify the teacher of the recommendation for termination and of the teacher's right to a hearing on the recommendation. The notification must be delivered by certified letter or by personal notification for which a signed receipt is returned. The notification must include:

(a) the statement of the reason or reasons that led to the recommendation for termination; and

(b) a printed copy of this section for the teacher's information.

(3) The teacher may, in writing, waive the right to a hearing. Unless the teacher waives the right to a hearing, the trustees shall set a hearing date, giving consideration to the convenience of the teacher, not less than 10 days or more than 20 days from receipt of the notice of recommendation for termination.

(4) The trustees shall:

(a) conduct the hearing on the recommendation at a regularly scheduled or special meeting of the board of trustees and in accordance with 2-3-203; and

(b) resolve at the conclusion of the hearing to terminate the teacher or to reject the recommendation for termination.

(5) The tenure teacher may appeal a decision to terminate an employment contract to the county superintendent if the teacher's employment is not covered by a collective bargaining agreement pursuant to Title 39, chapter 31, who may appoint a qualified attorney as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. If the employment of the teacher is covered by a collective bargaining agreement pursuant to Title 39, chapter 31, a tenure teacher shall appeal a decision to terminate an employment contract to an arbitrator agreed upon by the district and the teacher's exclusive representative. If the exclusive representative has declined to represent the teacher, the teacher or the district may request that the board of personnel appeals provide a list of arbitrators from which the teacher and the district shall, after the toss of a coin to determine the order of striking, alternately strike names from the list until one arbitrator is selected and appointed. By mutual agreement between the parties, the county superintendent of schools may be appointed as the arbitrator.

(6) In a termination involving a teacher whose employment is not covered by a collective bargaining agreement pursuant to Title 39, chapter 31, either the teacher or the trustees may appeal to the district court of the county in which the teacher was employed. The proceedings must be commenced no later than 60 days after the date of the decision of the county superintendent.

(7) In a termination involving a teacher whose employment is covered by a collective bargaining agreement pursuant to Title 39, chapter 31, a request for arbitration must be made within 20 days from the date of termination unless an alternative time period is provided by the terms of a collective bargaining agreement.

(8) The decision of the arbitrator is final and binding. Each party shall pay one-half of an arbitrator's charges unless a different cost allocation arrangement is agreed upon by the parties.

(9) An arbitrator may order a school district to reinstate a teacher who has been terminated without good cause and to provide compensation, with interest, to a teacher for lost wages and fringe benefits from the date of termination to the date that the teacher is offered reinstatement to the same or a comparable position. Interim earnings, including the amount that the teacher could have earned with reasonable diligence, must be deducted from the amount awarded for

lost wages. Before interim earnings are deducted from lost wages, reasonable amounts spent by a teacher in searching for, obtaining, or relocating to new employment must be deducted from interim earnings.

(10) Except as provided in this section, an arbitrator may not order a school district to provide compensation for punitive damages, pain and suffering, emotional distress, compensatory damages, attorney fees, or any other form of damages.

(11) Upon submission of the termination decision to an arbitrator, the teacher or the teacher's exclusive representative may not file an action against the district for reinstatement or compensation of lost wages and fringe benefits.

(12) As used in this section, the following definitions apply:

(a) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical insurance plan, disability or life insurance plan, or pension benefit in effect on the date of termination.

(b) "Lost wages" means the gross amount of wages that would have been reported to the internal revenue service on Form W-2 and includes any compensation deferred at the option of the employee.

History: En. 75-6104 by Sec. 85, Ch. 5, L. 1971; amd. Sec. 1, Ch. 157, L. 1974; amd. Sec. 2, Ch. 306, L. 1974; R.C.M. 1947, 75-6104; amd. Sec. 2, Ch. 521, L. 1983; amd. Sec. 1, Ch. 56, L. 1985; amd. Sec. 1, Ch. 510, L. 1987; amd. Sec. 3, Ch. 438, L. 1997.

Cross-References

Authority of Superintendent of Public Instruction to hear controversy appeals, 20-3-107.

Authority of County Superintendent to hear controversy appeals, 20-3-210.

Dismissal of teachers by cooperative, 20-7-456.

20-4-205. Notification of teacher reelection — acceptance. (1) The trustees shall provide written notice by June 1 to all teachers who have been reelected. Any teacher who does not receive notice of reelection or termination is automatically reelected for the ensuing school fiscal year.

(2) Any teacher who receives notification of reelection for the ensuing school fiscal year shall provide the trustees with written acceptance of the conditions of the reelection within 20 days after the receipt of the notice of reelection, and failure to notify the trustees within 20 days constitutes conclusive evidence of the teacher's nonacceptance of the tendered position.

History: En. 75-6105 by Sec. 86, Ch. 5, L. 1971; R.C.M. 1947, 75-6105; amd. Sec. 1, Ch. 574, L. 1989; amd. Sec. 4, Ch. 438, L. 1997.

20-4-206. Notification of nontenure teacher reelection — acceptance — termination. (1) The trustees shall provide written notice by June 1 to each nontenure teacher employed by the district regarding whether the nontenure teacher has been reelected for the ensuing school fiscal year. A teacher who does not receive written notice of reelection or termination is automatically reelected for the ensuing school fiscal year.

(2) A nontenure teacher who receives notification of reelection for the ensuing school fiscal year shall provide the trustees with written acceptance of the conditions of reelection within 20 days after the receipt of the notice of reelection. Failure to notify the trustees within 20 days constitutes conclusive evidence of the nontenure teacher's nonacceptance of the tendered position.

(3) Subject to the June 1 notice requirements in this section, the trustees may nonrenew the employment of a nontenure teacher at the conclusion of the school fiscal year with or without cause.

History: En. Sec. 1, Ch. 324, L. 1973; amd. Sec. 1, Ch. 87, L. 1975; amd. Sec. 1, Ch. 142, L. 1975; R.C.M. 1947, 75-6105.1; amd. Sec. 2, Ch. 510, L. 1987; amd. Sec. 2, Ch. 439, L. 1991; amd. Sec. 5, Ch. 438, L. 1997.

20-4-207. Dismissal of teacher under contract. (1) The trustees of any district may dismiss a teacher before the expiration of the teacher's employment contract for good cause.

(2) (a) The following persons may recommend the dismissal of a teacher for cause under subsection (1):

(i) a district superintendent;

(ii) in a district without a district superintendent, a principal; or

(iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

(b) A person listed in subsection (2)(a) who recommends dismissal of a teacher shall give notice of the recommendation in writing to each trustee of the district and to the teacher.

(c) The notice must state clearly and explicitly the specific reason or reasons that led to the recommendation for dismissal.

(3) (a) Whenever the trustees of any district receive a recommendation for dismissal, the trustees shall notify the teacher of the right to a hearing before the trustees either by certified letter or by personal notification for which a signed receipt must be returned. The teacher may in writing waive the right to a hearing. Unless the teacher waives the right to a hearing, the teacher and trustees shall agree on a hearing date not less than 10 days or more than 20 days from the notice of intent to recommend dismissal.

(b) The trustees shall conduct a hearing on the recommendation and resolve at the conclusion of the hearing to dismiss the teacher or to reject the recommendation for dismissal.

(4) With the exception of a county superintendent, a person who recommends dismissal pursuant to subsection (2) may suspend the teacher from active performance of duty with pay pending the hearing date if the teacher's behavior or acts that led to the recommendation for dismissal are contrary to the welfare of the students or the effective operation of the school district.

(5) Any teacher who has been dismissed may in writing within 20 days appeal the dismissal under the guidelines set forth in 20-4-204. The teacher may appeal a decision to terminate an employment contract to the county superintendent if the teacher's employment is not covered by a collective bargaining agreement pursuant to Title 39, chapter 31. If the employment of the teacher is covered by a collective bargaining agreement, a teacher shall appeal a decision to terminate an employment contract to an arbitrator.

History: En. 75-6107 by Sec. 88, Ch. 5, L. 1971; amd. Sec. 1, Ch. 327, L. 1971; R.C.M. 1947, 75-6107; amd. Sec. 2, Ch. 56, L. 1985; amd. Sec. 1, Ch. 28, L. 1989; amd. Sec. 6, Ch. 438, L. 1997; amd. Sec. 5, Ch. 514, L. 1999.

Cross-References

Authority of Superintendent of Public Instruction to hear controversy appeals, 20-3-107.

Authority of County Superintendent to hear controversy appeals, 20-3-210.

Authority of trustees to employ and dismiss teachers, 20-3-324.

Dismissal of teachers by cooperative, 20-7-456.

20-4-208. Transfer from administrative position. (1) A tenure teacher serving in an administrative position may be assigned to a teaching position with a reduction in salary when the district reduces the size of its administrative staff. The salary for the new position must be the same as the salary that the teacher would have received if the teacher had been continuously employed in the new position rather than in the administrative position.

(2) If a board policy or a collective bargaining agreement provides seniority rights for teachers, a district that assigns a tenure teacher serving in an administrative position to a teaching position shall recognize for seniority purposes the tenure teacher's time of service in the administrative position.

(3) As used in this section, the term "administrative position" means a position that the trustees of a district designate as administrative or supervisory in nature, not including the position of district superintendent.

(4) A tenure teacher who is transferred to a teaching position under this section must be offered the next comparable administrative position for which the tenure teacher is endorsed that becomes available in the district.

History: En. Sec. 2, Ch. 204, L. 1991; amd. Sec. 1, Ch. 114, L. 1993; amd. Sec. 7, Ch. 438, L. 1997.

20-4-209 and 20-4-210 reserved.

20-4-211. Repealed. Sec. 4, Ch. 527, L. 1999.

History: En. Sec. 2, Ch. 464, L. 1973; R.C.M. 1947, 75-6130.

20-4-212. Repealed. Sec. 4, Ch. 527, L. 1999.

History: En. Sec. 1, Ch. 464, L. 1973; R.C.M. 1947, 75-6129.

20-4-213. Repealed. Sec. 4, Ch. 527, L. 1999.

History: En. Sec. 3, Ch. 464, L. 1973; R.C.M. 1947, 75-6131; amd. Sec. 1, Ch. 458, L. 1979.

20-4-214. Repealed. Sec. 4, Ch. 527, L. 1999.

History: En. Sec. 4, Ch. 464, L. 1973; R.C.M. 1947, 75-6132.

Part 3 Teachers' Powers, Duties, and Privileges

20-4-301. Duties of teacher — nonpayment for failure to comply. (1) A teacher under contract with a district shall:

(a) conform to and enforce the laws, board of public education policies, and policies of the trustees of the district;

(b) use the course of instruction prescribed by the trustees;

(c) keep, in a neat and businesslike manner, a teacher's register of attendance and grades;

(d) within 10 days after the conclusion of each school semester, prepare a report that must include the pupil attendance and absence data from the teacher's register and grades. The report must be submitted to:

(i) the district superintendent, if there is one;

(ii) the principal of the school, if there is one and there is no district superintendent; or

(iii) the county superintendent or all county superintendents when the teacher is reporting for a joint district, if there is no district superintendent or principal.

(e) exercise due diligence in the care of school grounds and buildings, furniture, equipment, books, and supplies; and

(f) provide moral and civic instruction by:

(i) endeavoring to impress the pupils with the principles of morality, truth, justice, and patriotism, including any curriculum related to the flag prescribed by the trustees;

(ii) teaching the pupils to avoid idleness, profanity, and falsehood;

(iii) instructing the pupils in the principles of free government and training them to comprehend the rights, responsibilities, and dignity of American citizenship.

(2) The trustees are authorized to withhold the salary warrant of any teacher who does not comply with the provisions of subsection (1)(a) or (1)(b) until the teacher does comply with the provisions.

(3) The trustees may not pay any teacher the teacher's last month's salary until the teacher has provided a complete and accurate semester report to the required person, as determined by the person and as required in subsection (1)(d).

History: En. 75-6108 by Sec. 89, Ch. 5, L. 1971; R.C.M. 1947, 75-6108; amd. Sec. 1, Ch. 337, L. 1989; amd. Sec. 7, Ch. 22, L. 1997; amd. Sec. 2, Ch. 320, L. 1997.

Cross-References

ANB defined, 20-1-101.

Abused or neglected child — duty to report, 41-3-201.

20-4-302. Discipline and punishment of pupils — definition of corporal punishment — penalty — defense. (1) A teacher or principal has the authority to hold a pupil to a strict accountability for disorderly conduct in school, on the way to or from school, or during intermission or recess.

(2) For the purposes of this section, "corporal punishment" means knowingly and purposely inflicting physical pain on a pupil as a disciplinary measure.

(3) A person who is employed or engaged by a school district may not inflict or cause to be inflicted corporal punishment on a pupil.

(4) (a) A person who is employed or engaged by a school district may use physical restraint, defined as the placing of hands on a pupil in a manner that is reasonable and necessary to:

(i) quell a disturbance;

(ii) provide self-protection;

(iii) protect the pupil or others from physical injury;

(iv) obtain possession of a weapon or other dangerous object on the person of the pupil or within control of the pupil;

(v) maintain the orderly conduct of a pupil including but not limited to relocating a pupil in a waiting line, classroom, lunchroom, principal's office, or other on-campus facility; or

(vi) protect property from serious harm.

(b) Physical pain resulting from the use of physical restraint as defined in subsection (4)(a) does not constitute corporal punishment as long as the restraint is reasonable and necessary.

(5) A teacher in a district employing neither a district superintendent nor a principal at the school where the teacher is assigned has the authority to suspend a pupil for good cause. When either a district superintendent or a school principal is employed, only the superintendent or principal has the authority to suspend a pupil for good cause. Whenever a teacher suspends a pupil, the teacher shall notify the trustees and the county superintendent immediately of the action.

(6) A teacher has the duty to report the truancy or incorrigibility of a pupil to the district superintendent, the principal, the trustees, or the county superintendent, whichever is applicable.

(7) If a person who is employed or engaged by a school district uses corporal punishment or more physical restraint than is reasonable or necessary, the person is guilty of a misdemeanor and, upon conviction of the misdemeanor by a court of competent jurisdiction, shall be fined not less than \$25 or more than \$500.

(8) A person named as a defendant in an action brought under this section may assert as an affirmative defense that the use of physical restraint was reasonable or necessary. If that defense is denied by the person bringing the charge, the issue of whether the restraint used was reasonable or necessary must be determined by the trier of fact.

History: En. 75-6109 by Sec. 90, Ch. 5, L. 1971; amd. Sec. 1, Ch. 388, L. 1977; R.C.M. 1947, 75-6109; amd. Sec. 1, Ch. 135, L. 1981; amd. Sec. 1, Ch. 325, L. 1991.

Cross-References

Duties of pupils — sanctions, 20-5-201.

Suspension and expulsion of pupil, 20-5-202.

Confidential communications by student to teacher in educational institution, 26-1-809.

Use of force by parent, guardian, or teacher, 45-3-107.

20-4-303. Abuse of teachers. Any parent, guardian, or other person who shall insult or abuse a teacher anywhere on the school grounds or school premises shall be deemed guilty of a misdemeanor and, upon conviction of such misdemeanor by a court of competent jurisdiction, shall be fined no less than \$25 or more than \$500.

History: En. 75-6110 by Sec. 91, Ch. 5, L. 1971; amd. Sec. 1, Ch. 100, L. 1971; R.C.M. 1947, 75-6110.

20-4-304. Attendance at instructional and professional development meetings. The trustees of a school district shall close the schools of the district for the annual instructional and professional development meetings of teachers' organizations. A teacher may attend instructional and professional development meetings without loss of salary or attend other appropriate inservice training, as may be prescribed by the trustees, without loss of salary. If a teacher does neither, he must not be paid.

History: En. 75-6111 by Sec. 92, Ch. 5, L. 1971; amd. Sec. 1, Ch. 200, L. 1971; R.C.M. 1947, 75-6111; amd. Sec. 2, Ch. 638, L. 1989.

Cross-References

Traveling expenses of officers attending meetings, 20-1-211.

Pupil-instruction-related days, 20-1-304.

Part 4 District Superintendent and Principal

20-4-401. Appointment and dismissal of district superintendent or county high school principal. (1) The trustees of any high school district, except a county high school, and the trustees of the elementary district where its high school building is located shall jointly employ and appoint a district superintendent. The trustees of a county high school shall employ and appoint a district superintendent, except that they may employ and appoint a holder of a class 3 teacher certificate with a district superintendent endorsement as the county high school principal in lieu of a district superintendent. The trustees of any other district may employ and appoint a district superintendent.

(2) Whenever a joint board of trustees has been formed by a county high school and the elementary district where the county high school is located, the joint board shall jointly employ and appoint a district superintendent. During the term of contract of the jointly appointed district superintendent, neither district may separately employ and appoint a district superintendent or county high school principal.

(3) School districts other than those provided in subsection (2) that form a joint board of trustees or the boards of trustees of two or more districts may jointly employ and appoint a district superintendent, as allowed in 20-3-362, or may enter into an interlocal agreement pursuant to Title 7, chapter 11, part 1, to cooperatively share the employment of a district superintendent.

(4) The written contract of employment of a district superintendent or a county high school principal must be authorized by the proper resolution of the trustees of the district or the joint board of trustees and executed in duplicate by the presiding officer of the trustees or joint board of trustees and the clerks of the districts in the name of the districts and by the district superintendent or the county high school principal. The contract must be for a term of not more than 3 years, and after the second successive contract, the contract is considered to be renewed for a further term of 1 year from year to year unless the trustees, by resolution passed by a majority vote of its membership, resolve to terminate the services of the district superintendent or the county high school principal at the expiration of the existing contract. The trustees shall take the termination action and notify the district superintendent or the county high school principal in writing of their intent to terminate the superintendent's or principal's services at the expiration of the superintendent's or principal's current contract not later than February 1 of the last year of the contract.

(5) Whenever a joint board of trustees or the boards of trustees of two or more districts employs a person as the district superintendent under subsection (2) or (3), the districts shall prorate the compensation provided by the contract of employment on the basis of the number of teachers employed by each district.

(6) At any time the class 3 teacher certification or the endorsement of the certificate of a district superintendent or a county high school principal that qualifies the person to hold the position becomes invalid, the trustees of the district or the joint board of trustees shall discharge the person as the district superintendent or county high school principal regardless of the unexpired term of the contract. The trustees may not compensate the superintendent or principal under the terms of the contract for any services rendered subsequent to the date of the invalidation of the teacher certificate.

(7) A district superintendent or county high school principal may not engage in any work or activity that the trustees consider to be in conflict with the duties and employment as the district superintendent or county high school principal.

History: En. 75-6112 by Sec. 93, Ch. 5, L. 1971; amd. Sec. 1, Ch. 105, L. 1973; R.C.M. 1947, 75-6112; amd. Sec. 4, Ch. 308, L. 1987; amd. Sec. 28, Ch. 83, L. 1989; amd. Sec. 4, Ch. 318, L. 2001.

Cross-References

Code of ethics, Title 2, ch. 2, part 1.

Powers of joint board of trustees, 20-3-362.

20-4-402. Duties of district superintendent or county high school principal. The district superintendent or county high school principal is the executive officer of the trustees and, subject to the direction and control of the trustees, the executive officer shall:

(1) have general supervision of all schools of the district and the personnel employed by the district;

(2) implement and administer the policies of the trustees of the district;

(3) develop and recommend courses of instruction to the trustees for their consideration and approval in accordance with the provisions of 20-7-111;

(4) select all textbooks and submit the selections to the trustees for their approval in accordance with the provisions of 20-7-602;

(5) select all reference and library books and submit the selections to the trustees for their approval in accordance with provisions of 20-7-204;

(6) have general supervision of all pupils of the district, enforce the compulsory attendance provisions of this title, and have the authority to suspend for good cause a pupil of the district;

(7) report the pupil attendance, absence, and enrollment of the district and other pupil information required by the report form prescribed by the superintendent of public instruction to the county superintendent, or county superintendents when reporting for a joint district; and

(8) perform other duties in connection with the district as the trustees may prescribe.

History: En. 75-6113 by Sec. 94, Ch. 5, L. 1971; R.C.M. 1947, 75-6113; amd. Sec. 2, Ch. 135, L. 1981; amd. Sec. 2, Ch. 337, L. 1989; amd. Sec. 3, Ch. 343, L. 1999.

Cross-References

Powers and duties of trustees, 20-3-324.

Attendance, Title 20, ch. 5, part 1.

Suspension and expulsion, Title 20, ch. 5, part 2.

20-4-403. Powers and duties of principal. (1) Whenever the trustees of a district employ and appoint a school principal but do not employ and appoint a district superintendent, such principal shall perform the duties of a district superintendent as prescribed in subsections (4), (5), (6), (7), and (8) of 20-4-402 and shall have general supervision of such school and the personnel assigned to such school.

(2) If granted authority by the board of trustees, a school principal in a district that does employ and appoint a district superintendent may suspend for good cause any pupil of the school where the principal is employed.

History: En. 75-6114 by Sec. 95, Ch. 5, L. 1971; R.C.M. 1947, 75-6114; amd. Sec. 3, Ch. 135, L. 1981.

Part 5**Quality Educator Loan Assistance Program****Part Compiler's Comments**

Effective Date: Section 31, Ch. 1, Sp. L. May 2007, provided: "[This act] is effective July 1, 2007."

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

20-4-501. Quality educator loan assistance program. There is a quality educator loan assistance program administered by the board of regents through the office of the commissioner of higher education. The program must provide for the direct repayment of educational loans of eligible quality educators in accordance with policies and procedures adopted by the board of regents in accordance with this part.

History: En. Sec. 1, Ch. 1, Sp. L. May 2007.

20-4-502. Definitions. For purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) "Education cooperative" means a cooperative of Montana public schools as described in 20-7-451.

(2) "Educational loans" means all loans made pursuant to a federal loan program, except federal parent loans for undergraduate students (PLUS) loans, as provided in 20 U.S.C. 1078-2.

(3) "Federal loan program" means educational loans authorized by 20 U.S.C. 1071, et seq., 20 U.S.C. 1087a, et seq., and 20 U.S.C. 1087aa, et seq.

(4) (a) "Quality educator" means a full-time equivalent educator, as reported to the superintendent of public instruction for accreditation purposes in the previous school year, who:

(i) holds a valid certificate under the provisions of 20-4-106 and is employed by an entity listed in subsection (4)(b) in a position that requires an educator license in accordance with administrative rules adopted by the board of public education; or

(ii) is a licensed professional under 37-8-405, 37-8-415, 37-11-301, 37-15-301, 37-17-302, 37-22-301, 37-23-201, 37-24-301, or 37-25-302 and is employed by an entity listed in subsection (4)(b) of this section to provide services to students.

(b) For purposes of subsection (4)(a), an entity means:

(i) a school district;

(ii) an education cooperative;

(iii) the Montana school for the deaf and blind, as described in 20-8-101;

(iv) the Montana youth challenge program; and

(v) a state youth correctional facility, as defined in 41-5-103.

(5) "School district" means a public school district, as provided in 20-6-101 and 20-6-701.

History: En. Sec. 2, Ch. 1, Sp. L. May 2007.

20-4-503. Critical quality educator shortages. (1) The board of public education, in consultation with the office of public instruction, shall identify:

(a) specific schools that are impacted by critical quality educator shortages; and

(b) within the schools identified in subsection (1)(a), the specific quality educator licensure or endorsement areas that are impacted by critical quality educator shortages.

(2) The board of public education shall publish an annual report listing the schools and the licensure or endorsement areas identified as impacted by critical quality educator shortages, explaining the reasons that specific schools and licensure or endorsement areas have been identified and providing information regarding any success in retention.

(3) Quality educators working at schools identified in subsection (1) are eligible for repayment of all or part of the quality educator's outstanding educational loans existing at the time of application in accordance with the eligibility and award criteria established under this part.

History: En. Sec. 3, Ch. 1, Sp. L. May 2007.

20-4-504. Loan repayment assistance. Loan repayment assistance may be provided on behalf of a quality educator who:

(1) is employed in an identified school described in 20-4-503(1); and

(2) has an educational loan that is not in default and that has a minimum unpaid current balance of at least \$1,000 at the time of application.

History: En. Sec. 4, Ch. 1, Sp. L. May 2007.

20-4-505. Loan repayment assistance documentation. (1) A quality educator shall submit an application for loan repayment assistance to the board of regents in accordance with policies and procedures adopted by the board of regents. The application must include official verification or proof of the applicant's total unpaid accumulated educational loan debt and other documentation required by the board of regents that is necessary for verification of the applicant's eligibility.

(2) A quality educator is eligible for loan repayment assistance for up to a maximum of 4 years. The total annual loan repayment assistance for an eligible quality educator may not exceed \$3,000. The board of regents may require an eligible quality educator to provide documentation that the quality educator has exhausted repayment assistance from other federal, state, or local loan forgiveness, discharge, or repayment incentive programs.

(3) The board of regents may remit payment of the loan on behalf of the quality educator in accordance with the requirements of this part and policies and procedures adopted by the board of regents.

History: En. Sec. 5, Ch. 1, Sp. L. May 2007.

20-4-506. Funding — priorities. (1) If the funding for this part in any year is less than the total amount for which Montana quality educators qualify, the board of regents shall provide preference in the award of loan repayment assistance to quality educators working in the specific schools that are most impacted by quality educator shortages identified as provided in 20-4-503.

(2) This part may not be construed to require the provision of loan repayment assistance without an express appropriation for that purpose. This part may not be construed to require loan repayment assistance for school years prior to July 1, 2007.

History: En. Sec. 6, Ch. 1, Sp. L. May 2007.

CHAPTER 5 PUPILS

Part 1 — Attendance

- 20-5-101. Admittance of child to school.
- 20-5-102. Compulsory enrollment and excuses.
- 20-5-103. Compulsory attendance and excuses.
- 20-5-104. Attendance officer.
- 20-5-105. Attendance officer — powers and duties.
- 20-5-106. Truancy.
- 20-5-107. Incapacitated and indigent child attendance.
- 20-5-108. Tribal agreement with district for Indian child compulsory attendance and other agreements.
- 20-5-109. Nonpublic school requirements for compulsory enrollment exemption.
- 20-5-110. School district assessment for placement of a child who enrolls from a nonaccredited, nonpublic school.
- 20-5-111. Responsibilities and rights of parent who provides home school.

Part 2 — Duties—Suspension and Expulsion

- 20-5-201. Duties and sanctions.

- 20-5-202. Suspension and expulsion.
- 20-5-203. Secret organization prohibited.

Part 3 — Attendance Outside School District

- 20-5-301. Repealed.
- 20-5-302. Repealed.
- 20-5-303. Repealed.
- 20-5-304. Repealed.
- 20-5-305. Repealed.
- 20-5-306. Repealed.
- 20-5-307. Repealed.
- 20-5-308 through 20-5-310 reserved.
- 20-5-311. Repealed.
- 20-5-312. Repealed.
- 20-5-313. Repealed.
- 20-5-314. Reciprocal attendance agreement with adjoining state or province.
- 20-5-315. Repealed.
- 20-5-316. Repealed.
- 20-5-317 through 20-5-319 reserved.
- 20-5-320. Attendance with discretionary approval.
- 20-5-321. Attendance with mandatory approval — tuition and transportation.
- 20-5-322. Residency determination — notification — appeal for attendance agreement.
- 20-5-323. Tuition and transportation rates.
- 20-5-324. Tuition report and payment provisions.

Part 4 — Health

- 20-5-401. Repealed.
- 20-5-402. Definitions.
- 20-5-403. Immunization required — release and acceptance of immunization records.
- 20-5-404. Conditional attendance.
- 20-5-405. Medical or religious exemption.
- 20-5-406. Immunization record.
- 20-5-407. Rulemaking.
- 20-5-408. Enforcement.
- 20-5-409. Failure to immunize or claim exemption — injunction.
- 20-5-410. Civil penalty.
- 20-5-411. Renumbered 20-1-220.
- 20-5-412. Definition — parent-designated adult — administration of glucagon — training.
- 20-5-413. Limits on liability.
- 20-5-414 through 20-5-419 reserved.
- 20-5-420. Self-administration or possession of asthma, severe allergy, or anaphylaxis medication.

Part 5 — Enrollment of Pupil by Caretaker Relative

- 20-5-501. Purpose — legislative intent — parental rights — definitions.
- 20-5-502. Enrollment by caretaker relative — residency — affidavit.
- 20-5-503. Caretaker relative educational authorization affidavit — use — immunity — format.

Chapter Cross-References

- Penalty for abuse of students, 20-4-302.
- Fees for school supplies, 20-9-214.
- Powers of trustees to require pupils to pay fees, 20-9-214.
- Extracurricular fund for pupil functions, 20-9-504.
- Confidential communications by students, 26-1-809.
- Use of force by parent, guardian, or teacher, 45-3-107.

Part 1 Attendance

Part Cross-References

- School terms and holidays, Title 20, ch. 1, part 3.
- Duty of trustees to administer attendance laws, 20-3-324.
- School enrollment procedures to aid identification of missing children, 44-2-511.

20-5-101. Admittance of child to school. (1) The trustees shall assign and admit a child to a school in the district when the child is:

- (a) 6 years of age or older on or before September 10 of the year in which the child is to enroll but is not yet 19 years of age;
- (b) a resident of the district; and

(c) otherwise qualified under the provisions of this title to be admitted to the school.

(2) The trustees of a district may assign and admit any nonresident child to a school in the district under the tuition provisions of this title.

(3) The trustees may at their discretion assign and admit a child to a school in the district who is under 6 years of age or an adult who is 19 years of age or older if there are exceptional circumstances that merit waiving the age provision of this section. The trustees may also admit an individual who has graduated from high school but is not yet 19 years of age even though no special circumstances exist for waiver of the age provision of this section.

(4) The trustees shall assign and admit a child who is homeless, as defined in the Stewart B. McKinney Homeless Assistance Act (Public Law 100-77), to a school in the district regardless of residence. The trustees may not require an out-of-district attendance agreement or tuition for a homeless child.

(5) Except for the provisions of subsection (4), tuition for a nonresident child must be paid in accordance with the tuition provisions of this title.

History: En. 75-6302 by Sec. 115, Ch. 5, L. 1971; R.C.M. 1947, 75-6302; amd. Sec. 2, Ch. 334, L. 1979; amd. Sec. 2, Ch. 558, L. 1979; amd. Sec. 74, Ch. 575, L. 1981; amd. Sec. 1, Ch. 120, L. 1989; amd. Sec. 1, Ch. 214, L. 1995; amd. Sec. 1, Ch. 374, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 374 in (3) inserted second sentence authorizing trustees to admit an individual graduated from high school who is not yet 19 years old even though no special circumstances exist to waive age provision. Amendment effective July 1, 2007.

Cross-References

Free public education required, Art. X, sec. 1, Mont. Const.
 Aid prohibited to sectarian schools, Art. X, sec. 6, Mont. Const.
 Nondiscrimination in education, Art. X, sec. 7, Mont. Const.
 General rules for determining residence, 1-1-215.
 School enrollment procedures to aid identification of missing children, 44-2-511.
 Illegal discrimination, Title 49, ch. 2.
 Governmental code of fair practices, Title 49, ch. 3.

20-5-102. Compulsory enrollment and excuses. (1) Except as provided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to be instructed in the program prescribed by the board of public education pursuant to 20-7-111 until the later of the following dates:

- (a) the child's 16th birthday;
- (b) the date of completion of the work of the 8th grade.

(2) A parent, guardian, or other person shall enroll the child in the school assigned by the trustees of the district within the first week of the school term or when he establishes residence in the district unless the child is:

- (a) enrolled in a school of another district or state under any of the tuition provisions of this title;
- (b) provided with supervised correspondence study or supervised home study under the transportation provisions of this title;
- (c) excused from compulsory school attendance upon a determination by a district judge that attendance is not in the best interest of the child;
- (d) excused by the board of trustees upon a determination that attendance by a child who has attained the age of 16 is not in the best interest of the child and the school; or
- (e) enrolled in a nonpublic or home school that complies with the provisions of 20-5-109. For the purposes of this subsection (e), a home school is the instruction by a parent of his child, stepchild, or ward in his residence and a nonpublic school includes a parochial, church, religious, or private school.

History: En. 75-6303 by Sec. 116, Ch. 5, L. 1971; amd. Sec. 1, Ch. 389, L. 1971; amd. Sec. 3, Ch. 91, L. 1973; amd. Sec. 2, Ch. 137, L. 1975; R.C.M. 1947, 75-6303; amd. Sec. 1, Ch. 504, L. 1979; amd. Sec. 1, Ch. 355, L. 1983; amd. Sec. 1, Ch. 249, L. 1991.

Cross-References

Supervised home and correspondence study, 20-7-116, 20-10-121, 20-10-125, 20-10-142.

20-5-103. Compulsory attendance and excuses. (1) Except as provided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7

years of age or older prior to the first day of school in any school fiscal year shall cause the child to attend the school in which he is enrolled for the school term and each school day therein prescribed by the trustees of the district until the later of the following dates:

- (a) the child's 16th birthday;
- (b) the date of completion of the work of the 8th grade.
- (2) The provisions of subsection (1) do not apply in the following cases:
 - (a) The child has been excused under one of the conditions specified in 20-5-102.
 - (b) The child is absent because of illness, bereavement, or other reason prescribed by the policies of the trustees.
 - (c) The child has been suspended or expelled under the provisions of 20-5-202.

History: En. 75-6304 by Sec. 117, Ch. 5, L. 1971; amd. Sec. 8, Ch. 266, L. 1977; R.C.M. 1947, 75-6304; amd. Sec. 2, Ch. 504, L. 1979.

Cross-References

Definition of habitual truancy, 41-5-103.

Notice to parents of children absent from school, 44-2-507.

20-5-104. Attendance officer. In order to enforce the compulsory attendance provisions of this title, each district shall have at least one person serving as an attendance officer according to the following requirements:

- (1) districts of the first and second class shall employ and appoint one or more attendance officers;
- (2) districts of the third class may employ and appoint an attendance officer or may appoint a constable or other peace officer as an attendance officer; or
- (3) the county superintendent shall be the attendance officer in third-class districts that do not appoint an attendance officer.

History: En. 75-6305 by Sec. 118, Ch. 5, L. 1971; R.C.M. 1947, 75-6305.

Cross-References

Additional positions of County Superintendent, 20-3-206.

20-5-105. Attendance officer — powers and duties. The attendance officer of any district shall:

- (1) be vested with police powers, the authority to serve warrants, and the authority to enter places of employment of children in order to enforce the compulsory attendance provisions of this title;
- (2) take into custody any child subject to compulsory attendance who is not excused under the provisions of this title and conduct him to the school in which he is or should be enrolled;
- (3) do whatever else is required to investigate and enforce the compulsory attendance provisions of this title and the pupil attendance policies of the trustees;
- (4) institute proceedings against any parent, guardian, or other person violating the compulsory attendance provisions of this title;
- (5) keep a record of his transactions for the inspection and information of the trustees and make reports in the manner and to whomever the trustees designate; and
- (6) perform any other duties prescribed by the trustees to preserve the morals and secure good conduct of the pupils of the district.

History: En. 75-6306 by Sec. 119, Ch. 5, L. 1971; R.C.M. 1947, 75-6306.

Cross-References

Duties of District Superintendent or county high school principal to enforce attendance laws, 20-4-402.

20-5-106. Truancy. (1) Whenever the attendance officer discovers a child truant from school or a child subject to compulsory attendance who is not enrolled in a school providing the required instruction and has not been excused under the provisions of this title, he shall notify in writing the parent, guardian, or other person responsible for the care of the child that the continued truancy or nonenrollment of his child shall result in his prosecution under the provisions of this section. If the child is not enrolled and in attendance at a school or excused from school within 2 days after the receipt of the notice, the attendance officer shall file a complaint against such person in a court of competent jurisdiction.

(2) If convicted, such person shall be fined not less than \$5 or more than \$20. In the alternative, he may be required to give bond in the penal sum of \$100, with sureties, conditioned upon his agreement to cause the enrollment of his child within 2 days thereafter in a school

providing the courses of instruction required by this title and to cause the child to attend that school for the remainder of the current school term. If a person refuses to pay a fine and costs or to give a bond as ordered by the court, he shall be imprisoned in the county jail for a term of not less than 10 days or more than 30 days.

History: En. 75-6307 by Sec. 120, Ch. 5, L. 1971; R.C.M. 1947, 75-6307.

Cross-References

Duty of teachers to report truancy, 20-4-302.

20-5-107. Incapacitated and indigent child attendance. In lieu of the provisions of 20-5-106 and when an attendance officer is satisfied that a pupil or a child subject to compulsory attendance is not able to attend school because he does not have the physical capacity or he is absolutely required to work at home or elsewhere in order to support himself or his family, the attendance officer shall report the case to the authorities charged with the relief of the poor. It shall be the duty of such welfare authorities to offer such relief as will enable the child to attend school. If the parent, guardian, or other person who is responsible for the care of the child denies or neglects the assistance offered to enable the child to attend school, the child shall be committed to a state institution, at the discretion of the court.

History: En. 75-6308 by Sec. 121, Ch. 5, L. 1971; R.C.M. 1947, 75-6308.

20-5-108. Tribal agreement with district for Indian child compulsory attendance and other agreements. It shall be the duty of the trustees of any district where an Indian child resides to require the child to attend school in the same manner as any other child residing in the district, unless it is prohibited by the laws or treaties affecting the Indian tribe of which such child is a member or the Indian reservation on which such child resides. When such a prohibition exists, the trustees of any district shall have the authority to accept from the tribal council or other governing body of the Indian tribe or the Indian reservation authorization to enforce the compulsory attendance provisions of this title and compel the school attendance of the Indian children belonging to the tribe or residing on the reservation.

History: En. 75-6309 by Sec. 122, Ch. 5, L. 1971; R.C.M. 1947, 75-6309(part).

Cross-References

Cooperative agreements with Indian tribes, Title 18, ch. 11.

20-5-109. Nonpublic school requirements for compulsory enrollment exemption. To qualify its students for exemption from compulsory enrollment under 20-5-102, a nonpublic or home school:

- (1) shall maintain records on pupil attendance and disease immunization and make the records available to the county superintendent of schools on request;
- (2) shall provide at least the minimum aggregate hours of pupil instruction in accordance with 20-1-301 and 20-1-302;
- (3) must be housed in a building that complies with applicable local health and safety regulations;
- (4) shall provide an organized course of study that includes instruction in the subjects required of public schools as a basic instructional program pursuant to 20-7-111; and
- (5) in the case of home schools, shall notify the county superintendent of schools of the county in which the home school is located in each school fiscal year of the student's attendance at the school.

History: En. Sec. 2, Ch. 355, L. 1983; amd. Sec. 3, Ch. 498, L. 1989; amd. Sec. 9, Ch. 138, L. 2005.

Cross-References

Aid prohibited to sectarian schools, Art. X, sec. 6, Mont. Const.

Disease immunization, Title 20, ch. 5, part 4.

School enrollment procedures to aid identification of missing children, 44-2-511.

Building codes and standards, Title 50, ch. 60.

20-5-110. School district assessment for placement of a child who enrolls from a nonaccredited, nonpublic school. The trustees of a school district shall:

- (1) adopt a district policy on assessment for placement of any child who enrolls in a school of the district and whose previous place of instruction was a nonpublic school that is not accredited;
- (2) include in the adopted policy the following provisions:
 - (a) the specific assessment for placement to be administered to any child subject to the provisions of subsection (1);

(b) a procedure for grade and program placement of the child based on results of the assessment for placement, including considerations for the age and identified abilities of the child; and

(c) a hearing process before the board of trustees of the district if the parent or guardian of a child is not in agreement with the placement of the child and requests a hearing before the board; and

(3) administer the adopted policy required in subsection (1) in a uniform and fair manner.

History: En. Sec. 1, Ch. 498, L. 1989.

20-5-111. Responsibilities and rights of parent who provides home school. Subject to the provisions of 20-5-109, a parent has the authority to instruct his child, stepchild, or ward in a home school and is solely responsible for:

- (1) the educational philosophy of the home school;
- (2) the selection of instructional materials, curriculum, and textbooks;
- (3) the time, place, and method of instruction; and
- (4) the evaluation of the home school instruction.

History: En. Sec. 1, Ch. 444, L. 1991.

Part 2 Duties — Suspension and Expulsion

Part Cross-References

University students — qualifications and rights, Title 20, ch. 25, part 5.

20-5-201. Duties and sanctions. (1) A pupil shall:

- (a) comply with the policies of the trustees and the rules of the school that the pupil attends;
- (b) pursue the required course of instruction;
- (c) submit to the authority of the teachers, principal, and district superintendent of the district; and

(d) be subject to the control and authority of the teachers, principal, and district superintendent while the pupil is in school or on school premises, on the way to and from school, or during intermission or recess.

(2) A pupil who continually and willfully disobeys the provisions of this section, shows open defiance of the authority vested in school personnel by this section, defaces or damages any school building, school grounds, furniture, equipment, book belonging to the district, or harms or threatens to harm another person or the person's property is liable for punishment, suspension, or expulsion under the provisions of this title. When a pupil defaces or damages school property the pupil's parent or guardian is liable for the cost of repair or replacement upon the complaint of the teacher, principal, superintendent, or any trustee and the proof of any damage.

(3) In addition to the sanctions prescribed in this section, the trustees of a high school district may deny a high school pupil the honor of participating in the graduation exercise or exclude a high school pupil from participating in school activities. The trustees may not take action under this subsection until the incident or infraction causing the consideration has been investigated and the trustees have determined that the high school pupil was involved in the incident or infraction.

(4) (a) A school district may withhold the grades, diploma, or transcripts of a pupil who is responsible for the cost of school materials or the loss or damage of school property until the pupil or the pupil's parent or guardian satisfies the obligation.

(b) A school district that decides to withhold a pupil's grades, diploma, or transcripts from the pupil and the pupil's parent or guardian pursuant to subsection (4)(a) shall:

(i) upon receiving notice that the pupil has transferred to another school district in the state, notify the pupil's parent or guardian in writing that the school district to which the pupil has transferred will be requested to withhold the pupil's grades, diploma, or transcripts until any obligation has been satisfied;

(ii) forward appropriate grades or transcripts to the school to which the pupil has transferred;

(iii) at the same time, notify the school district of any financial obligation of the pupil and request the withholding of the pupil's grades, diploma, or transcripts until any obligations are met;

(iv) when the pupil or the pupil's parent or guardian satisfies the obligation, inform the school district to which the pupil has transferred; and

(v) adopt a policy regarding a process for a pupil or the pupil's parent or guardian to appeal the school district's decision to request that another school district withhold a pupil's grades, diploma, or transcripts.

(c) Upon receiving notice that a school district has requested the withholding of the grades, diploma, or transcripts of a pupil under this subsection (4), a school district to which the pupil has transferred shall withhold the grades, diploma, or transcripts of the pupil until it receives notice, from the district that initiated the decision, that the decision has been rescinded under the terms of subsection (4)(a).

History: En. 75-6310 by Sec. 123, Ch. 5, L. 1971; R.C.M. 1947, 75-6310; amd. Sec. 1, Ch. 403, L. 1993.

Cross-References

Penalty for disturbance of school, 20-1-206.

Power of teacher or principal over pupils, 20-4-302, 20-4-402, 20-4-403.

Liability of parent for property damage by minor, 40-6-237, 40-6-238.

20-5-202. Suspension and expulsion. (1) As provided in 20-4-302, 20-4-402, and 20-4-403, a pupil may be suspended by a teacher, superintendent, or principal. The trustees of the district shall adopt a policy defining the authority and procedure to be used by a teacher, superintendent, or principal in suspending a pupil and defining the circumstances and procedures by which the trustees may expel a pupil. Expulsion is a disciplinary action available only to the trustees.

(2) The trustees of a district shall adopt a policy for the expulsion of a student who is determined to have brought a firearm, as defined in 18 U.S.C. 921, to school and for referring the matter to the appropriate local law enforcement agency. A student who is determined to have brought a firearm to school under this subsection must be expelled from school for a period of not less than 1 year, except that the trustees may authorize the school administration to modify the requirement for expulsion of a student on a case-by-case basis. A decision to change the placement of a student with a disability who has been expelled pursuant to this section must be made in accordance with the Individuals With Disabilities Education Act.

(3) In accordance with 20-4-302, 20-4-402, 20-4-403, and subsection (1) of this section, a teacher, a superintendent, or a principal shall suspend immediately for good cause a student who is determined to have brought a firearm to school.

(4) Nothing in this section prevents a school district from:

(a) offering instructional activities related to firearms or allowing a firearm to be brought to school for instructional activities sanctioned by the district; or

(b) providing educational services in an alternative setting to a student who has been expelled from the student's regular school setting.

History: En. 75-6311 by Sec. 124, Ch. 5, L. 1971; R.C.M. 1947, 75-6311; amd. Sec. 4, Ch. 135, L. 1981; amd. Sec. 1, Ch. 457, L. 1995.

Cross-References

Safety instruction required, 87-2-105.

20-5-203. Secret organization prohibited. (1) It shall be unlawful for any pupil to participate in or be a member of any secret fraternity or other secret organization that is in any degree a school organization. It also shall be unlawful for any pupil or other person to solicit any pupil to join any such prohibited secret fraternity or other secret organization.

(2) Any person violating the provisions of this section shall be guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than \$5 or more than \$25 for each violation.

History: En. 75-6312 by Sec. 125, Ch. 5, L. 1971; R.C.M. 1947, 75-6312.

Part 3 Attendance Outside School District

Part Cross-References

Rules for determining residence, 1-1-215.

Duty of trustees to provide transportation, 20-10-121.

20-5-301. Repealed. Sec. 19, Ch. 563, L. 1993.

History: En. 75-6313 by Sec. 126, Ch. 5, L. 1971; amd. Sec. 9, Ch. 266, L. 1977; R.C.M. 1947, 75-6313; amd. Sec. 1, Ch. 655, L. 1985; amd. Sec. 67, Ch. 370, L. 1987; amd. Sec. 22, Ch. 609, L. 1987; amd. Sec. 1, Ch. 492, L. 1989; amd. Sec. 1, Ch. 765, L. 1991.

20-5-302. Repealed. Sec. 19, Ch. 563, L. 1993.

History: En. 75-6314 by Sec. 127, Ch. 5, L. 1971; R.C.M. 1947, 75-6314.

20-5-303. Repealed. Sec. 19, Ch. 563, L. 1993.

History: En. 75-6320 by Sec. 133, Ch. 5, L. 1971; R.C.M. 1947, 75-6320; amd. Sec. 2, Ch. 249, L. 1981; amd. Sec. 1, Ch. 263, L. 1983; amd. Sec. 1, Ch. 611, L. 1985; amd. Sec. 1, Ch. 42, L. 1989; amd. Sec. 186, Ch. 368, L. 1991.

20-5-304. Repealed. Sec. 19, Ch. 563, L. 1993.

History: En. 75-6315 by Sec. 128, Ch. 5, L. 1971; R.C.M. 1947, 75-6315.

20-5-305. Repealed. Sec. 19, Ch. 563, L. 1993.

History: En. 75-7201 by Sec. 340, Ch. 5, L. 1971; amd. Sec. 2, Ch. 251, L. 1974; R.C.M. 1947, 75-7201; amd. Sec. 1, Ch. 223, L. 1983; amd. Sec. 1, Ch. 279, L. 1987; amd. Sec. 11, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 380, L. 1991.

20-5-306. Repealed. Sec. 19, Ch. 563, L. 1993.

History: En. 75-7202 by Sec. 341, Ch. 5, L. 1971; amd. Sec. 3, Ch. 251, L. 1974; R.C.M. 1947, 75-7202.

20-5-307. Repealed. Sec. 19, Ch. 563, L. 1993.

History: En. 75-7203 by Sec. 342, Ch. 5, L. 1971; amd. Sec. 15, Ch. 277, L. 1977; R.C.M. 1947, 75-7203; amd. Sec. 1, Ch. 207, L. 1987; amd. Sec. 29, Ch. 83, L. 1989; amd. Sec. 4, Ch. 767, L. 1991; amd. Sec. 2, Ch. 133, L. 1993.

20-5-308 through 20-5-310 reserved.

20-5-311. Repealed. Sec. 19, Ch. 563, L. 1993.

History: En. 75-6316 by Sec. 129, Ch. 5, L. 1971; amd. Sec. 1, Ch. 211, L. 1974; R.C.M. 1947, 75-6316; amd. Sec. 1, Ch. 401, L. 1979; amd. Sec. 1, Ch. 504, L. 1983; amd. Sec. 1, Ch. 652, L. 1985; amd. Sec. 2, Ch. 655, L. 1985; amd. Sec. 1, Ch. 394, L. 1987; amd. Sec. 2, Ch. 765, L. 1991.

20-5-312. Repealed. Sec. 19, Ch. 563, L. 1993.

History: En. 75-6317 by Sec. 130, Ch. 5, L. 1971; amd. Sec. 1, Ch. 251, L. 1974; R.C.M. 1947, 75-6317; amd. Sec. 2, Ch. 401, L. 1979; amd. Sec. 2, Ch. 504, L. 1983; amd. Sec. 1, Ch. 70, L. 1985; amd. Sec. 2, Ch. 279, L. 1987; amd. Sec. 3, Ch. 337, L. 1989; amd. Sec. 12, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 380, L. 1991; amd. Sec. 5, Ch. 767, L. 1991; amd. Sec. 3, Ch. 133, L. 1993.

20-5-313. Repealed. Sec. 19, Ch. 563, L. 1993.

History: En. 75-6321 by Sec. 134, Ch. 5, L. 1971; R.C.M. 1947, 75-6321; amd. Sec. 3, Ch. 401, L. 1979; amd. Sec. 1, Ch. 249, L. 1981; amd. Sec. 2, Ch. 263, L. 1983; amd. Sec. 2, Ch. 611, L. 1985; amd. Sec. 187, Ch. 368, L. 1991.

20-5-314. Reciprocal attendance agreement with adjoining state or province. (1)

The superintendent of public instruction may execute a reciprocal attendance agreement with the superintendent of public instruction or a department of education of any state or province adjoining Montana to allow a child who is a Montana resident to attend school in the adjoining state or province and a child of the adjoining state or province to attend school in Montana. In negotiating a reciprocal attendance agreement, the tuition rates prescribed by 20-5-323 are waived and the reciprocal tuition rate may be negotiated as a flat amount or an actual-cost-per-pupil amount. The superintendent of public instruction shall supply a copy of any reciprocal attendance agreement that is executed to the county superintendent of each county that may be affected by the agreement.

(2) An out-of-district attendance agreement approved under the provisions of 20-5-320 and 20-5-321 must be completed for a child's attendance at a school outside the state or for an out-of-state child to attend a school in Montana.

History: En. 75-6318 by Sec. 131, Ch. 5, L. 1971; R.C.M. 1947, 75-6318; amd. Sec. 8, Ch. 563, L. 1993.

20-5-315. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. 75-6319 by Sec. 132, Ch. 5, L. 1971; amd. Sec. 1, Ch. 109, L. 1971; R.C.M. 1947, 75-6319.

20-5-316. Repealed. Sec. 7, Ch. 529, L. 1997.

History: En. Sec. 11, Ch. 765, L. 1991; Sec. 20-7-437, MCA 1991; redes. 20-5-316 by Sec. 21, Ch. 563, L. 1993.

20-5-317 through 20-5-319 reserved.

20-5-320. Attendance with discretionary approval. (1) A child may be enrolled in and attend a school in a Montana school district that is outside of the child's district of residence or a public school in a district of another state or province that is adjacent to the county of the child's

residence, subject to discretionary approval by the trustees of the resident district and the district of choice. If the trustees grant discretionary approval of the child's attendance in a school of the district, the parent or guardian may be charged tuition and may be charged for transportation.

(2) (a) Whenever a parent or guardian of a child wishes to have the child attend a school under the provisions of this section, the parent or guardian shall apply to the trustees of the district where the child wishes to attend. The application must be made on an out-of-district attendance agreement form supplied by the district and developed by the superintendent of public instruction.

(b) The attendance agreement must set forth the financial obligations, if any, for tuition and for costs incurred for transporting the child under Title 20, chapter 10.

(c) (i) The trustees of the district of choice may waive any or all of the tuition rate. The trustees of the district of choice may waive the tuition for all students whose tuition is required to be paid by one type of entity and may charge tuition for all students whose tuition is required to be paid by another type of entity. However, any waiver of tuition must be applied equally to all students whose tuition is paid by the same type of entity.

(ii) As used in this subsection (2)(c), "entity" means a parent or guardian or the trustees of the district of residence.

(3) An out-of-district attendance agreement approved under this section requires that the parent or guardian initiate the request for an out-of-district attendance agreement and that the trustees of both the district of residence and the district of choice approve the agreement.

(4) If the trustees of the district of choice waive tuition, approval of the resident district trustees is not required.

(5) The trustees of a school district may approve or disapprove the out-of-district attendance agreement consistent with this part and the policy adopted by the local board of trustees for out-of-district attendance agreements.

(6) The approval of an out-of-district attendance agreement by the applicable approval agents or as the result of an appeal must authorize the child named in the agreement to enroll in and attend the school named in the agreement for the designated school year.

(7) The trustees of the district where the child wishes to attend have the discretion to approve any attendance agreement.

(8) This section does not preclude the trustees of a district from approving an attendance agreement for educational program offerings not provided by the resident district, such as the kindergarten or grades 7 and 8 programs, if the trustees of both districts agree to the terms and conditions for attendance and any tuition and transportation requirement. For purposes of this subsection, the trustees of the resident district shall initiate the out-of-district agreement.

(9) (a) A provision of this title may not be construed to deny a parent or guardian the right to send a child, at personal expense, to any school of a district other than the resident district when the trustees of the district of choice have approved an out-of-district attendance agreement and the parent or guardian has agreed to pay the tuition as prescribed by 20-5-323. However, under this subsection (9), the tuition rate must be reduced by the amount that the parent or guardian of the child paid in district property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school.

(b) For the purposes of this section, "parent or guardian" includes an individual shareholder of a domestic corporation as defined in 35-1-113 whose shares are 95% held by related family members to the sixth degree of consanguinity or by marriage to the sixth degree of affinity.

(c) The tax amount to be credited to reduce any tuition charge to a parent or guardian under subsection (9)(a) is determined in the following manner:

(i) determine the percentage of the total shares of the corporation held by the shareholder parent or parents or guardian;

(ii) determine the portion of property taxes paid in the preceding school fiscal year by the corporation, parent, or guardian for the benefit and support of the district in which the child will attend school.

(d) The percentage of total shares as determined in subsection (9)(c)(i) is the percentage of taxes paid as determined in subsection (9)(c)(ii) that is to be credited to reduce the tuition charge.

(10) As used in 20-5-320 through 20-5-324, the term “guardian” means the guardian of a minor as provided in Title 72, chapter 5, part 2.

History: En. Sec. 1, Ch. 563, L. 1993; amd. Sec. 1, Ch. 464, L. 2001.

20-5-321. Attendance with mandatory approval — tuition and transportation. (1)

An out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child’s district of residence or in a public school district of a state or province that is adjacent to the county of the child’s residence is mandatory whenever:

(a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the school the child would attend in the resident district and the resident district does not provide transportation; or

(b) (i) the child resides in a location where, because of geographic conditions between the child’s home and the school that the child would attend within the district of residence, it is impractical to attend school in the district of residence, as determined by the county transportation committee based on the following criteria:

(A) the length of time that is in excess of the 1-hour limit for each bus trip for an elementary child as authorized under 20-10-121;

(B) whether distance traveled is greater than 40 miles one way from the child’s home to school on a dirt road or greater than a total of 60 miles one way from the child’s home to school in the district of residence over the shortest passable route; or

(C) whether the condition of the road or existence of a geographic barrier, such as a river or mountain pass, causes a hazard that prohibits safe travel between the home and school.

(ii) The decision of the county transportation committee is subject to appeal to the superintendent of public instruction, as provided in 20-3-107, but the decision must be considered as final for the purpose of the payment of tuition under 20-5-324(5)(a)(ii) until a decision is issued by the superintendent of public instruction. The superintendent of public instruction may review and rule upon a decision of the county transportation committee without an appeal being filed.

(c) the child is a member of a family that is required to send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided that the child resides more than 3 miles from an elementary school in the resident district or that the parent is required to move to the elementary district where the high school is located to enroll another child in high school. A child enrolled in an elementary school pursuant to this subsection (1)(c) may continue to attend the elementary school after the other child has left the high school.

(d) the child is under the protective care of a state agency or has been adjudicated to be a youth in need of intervention or a delinquent youth, as defined in 41-5-103;

(e) the child is required to attend school outside of the district of residence as the result of a placement in foster care or a group home licensed by the state; or

(f) the child is residing with a caretaker relative who wants to enroll the child pursuant to 20-5-502.

(2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall complete an out-of-district attendance agreement in consultation with an appropriate official of the district that the child will attend.

(b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

(c) (i) The trustees of the district of choice may waive any or all of the tuition rate. The trustees of the district of choice may waive the tuition for all students whose tuition is required to be paid by one type of entity and may charge tuition for all students whose tuition is required to be paid by another type of entity. However, any waiver of tuition must be applied equally to all students whose tuition is paid by the same type of entity.

(ii) As used in this subsection (2)(c), “entity” means a parent, a guardian, the trustees of the district of residence, or a state agency.

(3) Except as provided in subsection (4), the trustees of the resident district and the trustees of the district of attendance shall approve the out-of-district attendance agreement. The trustees of the district of attendance shall:

(a) notify the county superintendent of schools of the county of the child's residence of the approval of the agreement within 10 days; and

(b) submit the agreement for a student attending under the provisions of subsection (1)(d) or (1)(e) to the superintendent of public instruction for approval for payment under 20-5-324.

(4) Unless the child is a child with a disability who resides in the district, the trustees of the district where the school to be attended is located may disapprove an out-of-district attendance agreement whenever they find that, because of insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child.

History: En. Sec. 2, Ch. 563, L. 1993; amd. Sec. 1, Ch. 32, Sp. L. November 1993; amd. Sec. 1, Ch. 458, L. 1995; amd. Sec. 65, Ch. 546, L. 1995; amd. Sec. 1, Ch. 529, L. 1997; amd. Sec. 2, Ch. 550, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 2, Ch. 464, L. 2001; amd. Sec. 2, Ch. 463, L. 2005; amd. Sec. 5, Ch. 442, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 442 inserted (1)(f) regarding mandatory enrollment if the child is residing with a caretaker relative who wants to enroll the child pursuant to 20-5-502; and made minor changes in style. Amendment effective July 1, 2007.

Applicability: Section 11, Ch. 442, L. 2007, provided: "[This act] applies to a caretaker relative to whom a minor is given by a parent on or after July 1, 2007, for care by the relative."

20-5-322. Residency determination — notification — appeal for attendance agreement. (1) In considering an out-of-district attendance agreement, except as provided in 20-9-707, the trustees shall determine the child's district of residence on the basis of the provisions of 1-1-215.

(2) Within 10 days of the initial application for an agreement, the trustees of the district of choice shall notify the parent or guardian of the child and the trustees of the district of residence involved in the out-of-district attendance agreement of the anticipated date for approval or disapproval of the agreement.

(3) Within 10 days of approval or disapproval of an out-of-district attendance agreement, the trustees shall provide copies of the approved or disapproved attendance agreement to the parent or guardian and to the child's district of residence.

(4) Within 15 days of receipt of an approved out-of-district attendance agreement, the trustees of the district of residence shall approve or disapprove the agreement under the provisions of this part and forward the completed agreement to the county superintendent of schools of the county of residence, the trustees of the district of choice, and the parent or guardian.

(5) If an out-of-district attendance agreement is disapproved or no action is taken, the parent may appeal the disapproval or lack of action to the county superintendent and, subsequently, to the superintendent of public instruction under the provisions for the appeal of controversies in this title.

(6) For purposes of payment under 20-5-324(2), a nonresident student who becomes a resident by reaching 18 years of age during the school year may continue to have tuition paid on the student's behalf for the duration of the student's enrollment in the district for that school year.

History: En. Sec. 3, Ch. 563, L. 1993; amd. Sec. 1, Ch. 132, L. 2005; amd. Sec. 2, Ch. 215, L. 2005; amd. Sec. 22, Ch. 44, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 44 in (6) near beginning after "under" substituted "20-5-324(2)" for "20-5-324(6)"; and made minor changes in style. Amendment effective October 1, 2007.

20-5-323. Tuition and transportation rates. (1) Except as provided in subsections (2) through (5), whenever a child has approval to attend a school outside of the child's district of residence under the provisions of 20-5-320 or 20-5-321, the rate of tuition charged for a Montana resident student may not exceed 20% of the per-ANB maximum rate established in 20-9-306 for the year of attendance.

(2) The tuition for a child with a disability must be determined under rules adopted by the superintendent of public instruction for the calculation of tuition for special education pupils.

(3) The tuition rate for out-of-district placement pursuant to 20-5-321(1)(d) and (1)(e) for a student without disabilities who requires a program with costs that exceed the average district costs must be determined as the actual individual costs of providing that program according to the following:

(a) the district of attendance and the district, person, or entity responsible for the tuition payments shall approve an agreement with the district of attendance for the tuition cost;

(b) for a Montana resident student, 80% of the maximum per-ANB rate established in 20-9-306, received in the year for which the tuition charges are calculated, must be subtracted from the per-student program costs for a Montana resident student; and

(c) the maximum tuition rate paid to a district under this section may not exceed \$2,500 per ANB.

(4) When a child attends a public school of another state or province, the amount of daily tuition may not be greater than the average annual cost for each student in the child's district of residence. This calculation for tuition purposes is determined by totaling all of the expenditures for all of the district budgeted funds for the preceding school fiscal year and dividing that amount by the October 1 enrollment in the preceding school fiscal year. For the purposes of this subsection, the following do not apply:

(a) placement of a child with a disability pursuant to Title 20, chapter 7, part 4;

(b) placement made in a state or province with a reciprocal tuition agreement pursuant to 20-5-314;

(c) an order issued under Title 40, chapter 4, part 2; or

(d) out-of-state placement by a state agency.

(5) When a child is placed by a state agency in an out-of-state residential facility, the state agency making the placement is responsible for the education costs resulting from the placement.

(6) The amount, if any, charged for transportation may not exceed the lesser of the average transportation cost for each student in the child's district of residence or 35 cents a mile. The average expenditures for the district transportation fund for the preceding school fiscal year must be calculated by dividing the transportation fund expenditures by the October 1 enrollment for the preceding fiscal year.

History: En. Sec. 4, Ch. 563, L. 1993; amd. Sec. 60, Ch. 633, L. 1993; amd. Sec. 2, Ch. 529, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 1, Ch. 409, L. 2001; amd. Sec. 3, Ch. 464, L. 2001; amd. Sec. 1, Ch. 462, L. 2005; amd. Sec. 5, Ch. 4, Sp. L. December 2005.

Compiler's Comments

2005 Special Session Amendment: (Version effective July 1, 2006) Chapter 4 in (6) increased rate from 25 cents a mile to 35 cents a mile. Amendment effective July 1, 2006.

Effective Date — Applicability: Section 15, Ch. 4, Sp. L. December 2005, provided: "[This act] is effective July 1, 2006, and applies to school budgets for school fiscal years beginning on or after July 1, 2006."

20-5-324. Tuition report and payment provisions. (1) Following the close of each school fiscal year, the trustees of a district shall report to the superintendent of public instruction:

(a) the name and district of residence of each child who attended a school of the district under a mandatory out-of-district attendance agreement approved under the provisions of 20-5-321(1)(d) or (1)(e) in the previous school year;

(b) the number of days of enrollment for each child reported under the provisions of subsection (1)(a);

(c) the annual tuition rate for each child's tuition payment, as determined under the provisions of 20-5-323, and the tuition cost for each child reported under the provisions of subsection (1)(a);

(d) the names, districts of attendance, and amount of tuition paid by the district for resident students attending public schools out of state in the previous school year; and

(e) the names, schools of attendance, and amount of tuition to be paid by the district for resident students attending day-treatment programs under approved individualized education programs at private, nonsectarian schools in the previous school year.

(2) Subject to the limitations of 20-5-323, the superintendent of public instruction shall:

(a) pay the district of attendance the amount of the tuition obligation reported under subsection (1)(c), prorated for the actual days of enrollment;

(b) determine the total per-ANB entitlement for which the district would have been eligible if the students reported in subsections (1)(d) and (1)(e) had been enrolled in the resident district in the prior year; and

(c) reimburse the district of residence for the state portion of the per-ANB entitlement for each student, not to exceed the district's actual payment of tuition or fees for service for the student in the previous year.

(3) In order to be eligible to receive payment under subsection (2), the trustees of the district of attendance shall submit the report required by subsection (1) within the school fiscal year following the year of attendance.

(4) Notwithstanding the requirements of subsection (5)(a), tuition payment provisions for out-of-district placement of students with disabilities must be determined pursuant to Title 20, chapter 7, part 4.

(5) (a) (i) When a child has approval to attend a school outside the child's district of residence at the resident district's expense under the provisions of 20-5-320 or 20-5-321(1)(a) or (1)(b) or when a child has approval to attend a day-treatment program under an approved individualized education program at a private, nonsectarian school located in or outside of the child's district of residence, the district of residence shall finance the tuition amount from the district tuition fund and any transportation amount from the transportation fund.

(ii) By December 31 of the school fiscal year following the year of attendance, the district of residence shall pay at least one-half of any tuition and transportation obligation established under subsection (5)(a)(i) out of the money realized to date from the district tuition or transportation fund. The remaining tuition and transportation obligation must be paid by June 15 of the school fiscal year following the year of attendance.

(b) When a child has approval to attend a school outside the child's district of residence because of a parent's or guardian's request under the provisions of 20-5-320 or 20-5-321(1)(c), the parent or guardian of the child shall finance the tuition and transportation amount.

(6) (a) Except as provided in subsections (6)(b) through (6)(d), the district shall credit tuition receipts to the district general fund and transportation receipts to the transportation fund.

(b) Any tuition receipts received under the provisions of 20-5-323(3) for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

(c) Any tuition receipts received for the current school fiscal year for a pupil who is a child with a disability that exceed the tuition amount received for a pupil without disabilities may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

(d) Any other tuition receipts received for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and may be used for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must be credited to the district general fund budget.

(7) The reimbursements paid under subsection (2)(c) must be deposited into the district tuition fund and must be used by the district to pay obligations for resident students attending public schools out of state or for resident students attending day-treatment programs under approved individualized education programs at private, nonsectarian schools at district expense.

(8) The provisions of this section do not apply to out-of-state placements made by a state agency pursuant to 20-7-422.

History: En. Sec. 5, Ch. 563, L. 1993; amd. Sec. 27, Ch. 509, L. 1995; amd. Sec. 9, Ch. 22, L. 1997; amd. Sec. 1, Ch. 389, L. 1997; amd. Sec. 3, Ch. 529, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 4, Ch. 464, L. 2001; amd. Sec. 1, Ch. 130, L. 2003; amd. Sec. 3, Ch. 463, L. 2005.

Part 4 Health

Part Cross-References

Duty of trustees to retain physician and nurse and to visit schools to examine conditions, 20-3-324.

Contributions by school boards to health boards authorized, 50-2-113.

20-5-401. Repealed. Sec. 13, Ch. 147, L. 1979.

History: En. 75-5933 by Sec. 62, Ch. 5, L. 1971; amd. Sec. 1, Ch. 69, L. 1973; amd. Sec. 1, Ch. 280, L. 1973; R.C.M. 1947, 75-5933(19).

20-5-402. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Governing authority" means the board of trustees of a school district or the administrator of a private school, preschool, or postsecondary school.

(3) "Immunization" means induction of a state of resistance to a disease through administration of an immunizing agent.

(4) "Local health department" means a city, city-county, county, or district health department.

(5) "Local health officer" means a city, city-county, county, or district health officer.

(6) "Postsecondary school" means a community college, a unit of the Montana university system, or a private university or college.

(7) "Preschool" means a place or facility that provides, on a regular basis and as its primary purpose, educational instruction designed for children 5 years of age or younger and that:

(a) serves no child under 5 years of age for more than 3 hours a day; and

(b) serves no child 5 years of age for more than 6 hours a day.

(8) "School" means a place or institution for the teaching of individuals, the curriculum of which is composed of the work of:

(a) any combination of kindergarten through grade 12;

(b) a postsecondary school; or

(c) a preschool.

History: En. Sec. 1, Ch. 147, L. 1979; amd. Sec. 1, Ch. 644, L. 1989; amd. Sec. 12, Ch. 308, L. 1995; amd. Sec. 47, Ch. 418, L. 1995; amd. Sec. 66, Ch. 546, L. 1995.

20-5-403. Immunization required — release and acceptance of immunization records. (1) The governing authority of any school other than a postsecondary school may not allow a person to attend as a pupil unless the person:

(a) has been immunized against diphtheria, pertussis, tetanus, poliomyelitis, rubella, mumps, and measles (rubeola) in the manner and with immunizing agents approved by the department, except that pertussis vaccination is not required for a person 7 years of age or older;

(b) has been immunized against *Haemophilus influenza* type "b" before enrolling in a preschool if under 5 years of age;

(c) qualifies for conditional attendance; or

(d) files for an exemption.

(2) (a) The governing authority of a postsecondary school may not allow a person to attend as a pupil unless the person:

(i) has been immunized against rubella and measles (rubeola) in the manner and with immunizing agents approved by the department; or

(ii) files for an exemption.

(b) The governing authority of a postsecondary school may impose immunization requirements as a condition of attendance that are more stringent than those required by this part.

(3) A pupil who transfers from one school district to another may photocopy immunization records in the possession of the school of origin. The school district to which a pupil transfers shall accept the photocopy as evidence of immunization. Within 30 days after a transferring pupil ceases attendance at the school of origin, the school shall retain a certified copy for the permanent record and send the original immunization records for the pupil to the school district to which the pupil transfers.

History: En. Sec. 2, Ch. 147, L. 1979; amd. Sec. 1, Ch. 509, L. 1981; amd. Sec. 1, Ch. 102, L. 1983; amd. Sec. 2, Ch. 644, L. 1989; amd. Sec. 1, Ch. 165, L. 1991; amd. Sec. 1, Ch. 156, L. 2005.

Cross-References

Regulation of schools in matters of health, 50-1-206.

20-5-404. Conditional attendance. The governing authority of a school other than a postsecondary school may allow the commencement of attendance in school by a person who has not been immunized against each disease listed in 20-5-403 if that person has received one or more doses of polio, measles (rubeola), mumps, rubella, diphtheria, pertussis, Haemophilus influenza type “b”, and tetanus vaccine, except that pertussis vaccine is not required for a person 7 years of age or older and Haemophilus influenza type “b” vaccine is required only for children under 5 years of age.

History: En. Sec. 3, Ch. 147, L. 1979; amd. Sec. 2, Ch. 102, L. 1983; amd. Sec. 3, Ch. 644, L. 1989; amd. Sec. 2, Ch. 165, L. 1991.

20-5-405. Medical or religious exemption. (1) When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking to attend school or the person seeking to attend school, if an adult, signs and files with the governing authority, prior to the commencement of attendance each school year, a notarized affidavit on a form prescribed by the department stating that immunization is contrary to the religious tenets and practices of the signer, immunization of the person seeking to attend the school may not be required prior to attendance at the school. The statement must be maintained as part of the person’s immunization records. A person who falsely claims a religious exemption is subject to the penalty for false swearing provided in 45-7-202.

(2) When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking to attend school, or the person seeking to attend school, if an adult, files with the governing authority a written statement signed by a physician licensed to practice medicine in any jurisdiction of the United States or Canada stating that the physical condition of the person seeking to attend school or medical circumstances relating to him indicate that some or all of the required immunizations are not considered safe and indicating the specific nature and probable duration of the medical condition or circumstances which contraindicate immunization, he is exempt from the requirements of this part to the extent indicated by the physician’s statement. The statement must be maintained as part of the person’s immunization records.

(3) Whenever there is good cause to believe that a person for whom an exemption has been filed under this section has a disease or has been exposed to a disease listed in 20-5-403 or will as the result of school attendance be exposed to such disease, the person may be excluded from the school by the local health officer or the department until the excluding authority is satisfied that the person no longer risks contracting or transmitting that disease.

History: En. Sec. 4, Ch. 147, L. 1979; amd. Sec. 3, Ch. 102, L. 1983; amd. Sec. 4, Ch. 644, L. 1989.

20-5-406. Immunization record. The governing authority of each school shall require written evidence of each pupil’s immunization against the diseases listed in 20-5-403 and shall record the immunization of each pupil as part of his permanent school record on a form prescribed by the department.

History: En. Sec. 5, Ch. 147, L. 1979.

Cross-References

Public records, Title 2, ch. 6.

20-5-407. Rulemaking. The department may adopt rules necessary to implement the provisions of this part.

History: En. Sec. 6, Ch. 147, L. 1979.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

20-5-408. Enforcement. (1) The governing authority of any school other than a postsecondary school shall prohibit from further attendance any pupil allowed to attend conditionally who has failed to obtain the immunizations required by 20-5-403(1) within time periods established by the department until that pupil has been immunized as required by the department or unless that pupil has been exempted under 20-5-405.

(2) Each governing authority shall file a written report on the immunization status of all pupils under its jurisdiction with the department and the local health department at times and on forms prescribed by the department.

(3) The local and state health departments shall have access to all information relating to immunization of any pupil in any school.

History: En. Sec. 7, Ch. 147, L. 1979; amd. Sec. 4, Ch. 102, L. 1983; amd. Sec. 5, Ch. 644, L. 1989.

20-5-409. Failure to immunize or claim exemption — injunction. (1) A parent, guardian, or adult having the responsibility for the care and custody of a minor required by law to attend school shall elect to do one of the following:

(a) present evidence to the school that the minor has been immunized against the diseases specified in 20-5-403;

(b) take action to fully immunize the minor against the diseases listed in 20-5-403, in the manner and with immunizing agents approved by the department;

(c) file for an exemption pursuant to 20-5-405.

(2) If, as a result of the parent, guardian, or responsible adult's failure to make the election referred to in subsection (1), the minor is excluded from school, the department or the local health department may seek an injunction requiring the parent, guardian, or responsible adult to elect and perform one of the alternatives listed in subsection (1).

(3) Injunction is the exclusive remedy for failure to take any of the actions referred to in subsection (1).

History: En. Sec. 8, Ch. 147, L. 1979.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

20-5-410. Civil penalty. (1) Any person who violates any provision of this part, any rule promulgated under this part, or any order made pursuant to this part, with the exception of 20-5-409 and any rule adopted or order issued pursuant to 20-5-409, is subject to a civil penalty not to exceed \$500. The department or the local health department may institute and maintain any enforcement proceedings hereunder.

(2) Action under subsection (1) is not a bar to enforcement of this part or of rules or orders made under it by injunction or other appropriate civil remedies.

(3) An action for a civil remedy to enforce this part or rules or orders made under it may be brought in the district court of any county where a violation occurs or is threatened.

History: En. Sec. 9, Ch. 147, L. 1979.

20-5-411. Renumbered 20-1-220. Code Commissioner, 1997.

20-5-412. Definition — parent-designated adult — administration of glucagon — training. (1) As used in 20-5-413 and this section, "parent-designated adult" means a school district employee, selected by a parent, an individual who has executed a caretaker relative educational authorization affidavit pursuant to 20-5-503, an individual who has executed a caretaker relative medical authorization affidavit pursuant to 40-6-502, or a guardian of a diabetic student, who voluntarily agrees to administer glucagon to the student.

(2) A parent, an individual who has executed a caretaker relative educational authorization affidavit pursuant to 20-5-503, an individual who has executed a caretaker relative medical authorization affidavit pursuant to 40-6-502, or a guardian of a diabetic student may designate an adult to administer glucagon to the student as provided in subsection (3). Written proof of the designation by a parent, an individual who has executed a caretaker relative educational authorization affidavit pursuant to 20-5-503, an individual who has executed a caretaker relative medical authorization affidavit pursuant to 40-6-502, or a guardian and acceptance of the designation by the parent-designated adult must be filed with the school district.

(3) A parent-designated adult may administer glucagon to a diabetic student in an emergency situation. The glucagon must be provided by the parent, an individual who has executed a caretaker relative educational authorization affidavit pursuant to 20-5-503, an

individual who has executed a caretaker relative medical authorization affidavit pursuant to 40-6-502, or a guardian of the student.

(4) A parent-designated adult must be trained in recognizing hypoglycemia and the proper method of administering glucagon. Training must be provided by a health care professional, as defined in 33-36-103, or a recognized expert in diabetic care selected by the parent, an individual who has executed a caretaker relative educational authorization affidavit pursuant to 20-5-503, an individual who has executed a caretaker relative medical authorization affidavit pursuant to 40-6-502, or a guardian. Written documentation of the training received by the parent-designated adult must be filed with the school district.

History: En. Sec. 1, Ch. 421, L. 2003; amd. Sec. 3, Ch. 393, L. 2007; amd. Sec. 6, Ch. 442, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 393 in (1), (2) in two places, (3), and (4) inserted “an individual who has executed a caretaker relative medical authorization affidavit pursuant to 40-6-502”; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 442 in (1) near middle, in (2) at beginning of first sentence and near beginning of second sentence, in (3) near end, and in (4) near end of second sentence after “parent” inserted “an individual who has executed a caretaker relative educational authorization affidavit pursuant to 20-5-503”; and made minor changes in style. Amendment effective July 1, 2007.

Applicability: Section 7, Ch. 393, L. 2007, provided: “[This act] applies to a caretaker relative, as defined in [section 1] [40-6-501], to whom a child is given by a parent after October 1, 2007, for care by the relative.”

Section 11, Ch. 442, L. 2007, provided: “[This act] applies to a caretaker relative to whom a minor is given by a parent on or after July 1, 2007, for care by the relative.”

20-5-413. Limits on liability. (1) A parent-designated adult who administers glucagon pursuant to 20-5-412 is not liable to a person for civil damages resulting from administering the glucagon unless the acts or omission is the result of gross negligence, willful or wanton misconduct, or an intentional tort.

(2) The school district employing the parent-designated adult is not liable to a person for civil damages resulting from the administration of the glucagon unless the acts or omission is the result of gross negligence, willful or wanton misconduct, or an intentional tort.

History: En. Sec. 2, Ch. 421, L. 2003.

20-5-414 through 20-5-419 reserved.

20-5-420. Self-administration or possession of asthma, severe allergy, or anaphylaxis medication. (1) As used in this section, the following definitions apply:

(a) “Anaphylaxis” means a systemic allergic reaction that can be fatal in a short time period and is also known as anaphylactic shock.

(b) “Asthma” means a chronic disorder or condition of the lungs that requires lifetime, ongoing, medical intervention.

(c) “Medication” means a medicine, including inhaled bronchodilators, inhaled corticosteroids, and autoinjectable epinephrine, prescribed by a licensed physician as defined in 37-3-102, a physician assistant who has been authorized to prescribe medications as provided in 37-20-404, or an advanced practice registered nurse with prescriptive authority as provided in 37-8-202(1)(h).

(d) “Self-administration” means a pupil’s discretionary use of the medication prescribed for the pupil.

(e) “Severe allergies” means a life-threatening hypersensitivity to a specific substance such as food, pollen, or dust.

(2) A school, whether public or nonpublic, shall permit the possession or self-administration of medication, as prescribed, by a pupil with asthma, severe allergies, or anaphylaxis if the parents or guardians of the pupil provide to the school:

(a) written authorization, acknowledging and agreeing to the liability provisions in subsection (4), for the possession or self-administration of medication, as prescribed;

(b) a written statement from the pupil’s physician, physician assistant, or advanced practice registered nurse containing the following information:

(i) the name and purpose of the medication;

(ii) the prescribed dosage; and

(iii) the time or times at which or the special circumstances under which the medication is to be administered, as prescribed;

(c) documentation that the pupil has demonstrated to the health care practitioner and the school nurse, if available, the skill level necessary to self-administer the asthma, severe allergy, or anaphylaxis medication as prescribed; and

(d) documentation that the pupil's physician, physician assistant, or advanced practice registered nurse has formulated a written treatment plan for managing asthma, severe allergies, or anaphylaxis episodes of the pupil and for medication use, as prescribed, by the pupil during school hours.

(3) The information provided by the parents or guardians must be kept on file in the office of the school nurse or, in the absence of a school nurse, the school's administrator.

(4) The school district or nonpublic school and its employees and agents are not liable as a result of any injury arising from the self-administration of medication by the pupil unless an act or omission is the result of gross negligence, willful and wanton conduct, or an intentional tort. The parents or guardians of the pupil must be given a written notice and sign a statement acknowledging that the school district or nonpublic school may not incur liability as a result of any injury arising from the self-administration of medication by the pupil and that the parents or guardians shall indemnify and hold harmless the school district or nonpublic school and its employees and agents against any claims, except a claim based on an act or omission that is the result of gross negligence, willful and wanton conduct, or an intentional tort.

(5) The permission for self-administration of asthma, severe allergy, or anaphylaxis medication is effective for the school year for which it is granted and must be renewed each subsequent school year or, if the medication expires or the dosage, frequency of administration, or other conditions change, upon fulfillment of the requirements of this section.

(6) If the requirements of this section are fulfilled, a pupil with asthma, severe allergies, or anaphylaxis may possess and use the pupil's medication, as prescribed:

- (a) while in school;
- (b) while at a school-sponsored activity;
- (c) while under the supervision of school personnel;
- (d) before or after normal school activities, such as while in before-school or after-school care on school-operated property; or
- (e) while in transit to or from school or school-sponsored activities.

(7) If provided by the parent, an individual who has executed a caretaker relative educational authorization affidavit pursuant to 20-5-503, an individual who has executed a caretaker relative medical authorization affidavit pursuant to 40-6-502, or a guardian and in accordance with documents provided by the pupil's physician, physician assistant, or advanced practice registered nurse, asthma, severe allergy, or anaphylaxis medication may be kept by the pupil and backup medication must be kept at a pupil's school in a predetermined location or locations to which the pupil has access in the event of an asthma, severe allergy, or anaphylaxis emergency.

(8) Immediately after using epinephrine during school hours, a student shall report to the school nurse or other adult at the school who shall provide followup care, including making a 9-1-1 emergency call.

(9) Youth correctional facilities are exempt from this section and shall adopt policies related to access and use of asthma, severe allergy, or anaphylaxis medications.

History: En. Sec. 1, Ch. 306, L. 2005; amd. Sec. 33, Ch. 519, L. 2005; amd. Sec. 23, Ch. 44, L. 2007; amd. Sec. 1, Ch. 346, L. 2007; amd. Sec. 4, Ch. 393, L. 2007; amd. Sec. 7, Ch. 442, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 44 in definition of medication at end substituted "37-8-202(1)(h)" for "37-8-202(5)". Amendment effective October 1, 2007.

Chapter 346 in definition of medication after "prescribe" deleted "asthma"; in definition of self-administration before "medication" deleted "asthma"; inserted definition of severe allergies; in (2) and in (2)(a) before "self-administration" inserted "possession or" and after "medication" inserted "as prescribed"; in (2) after "asthma" inserted "severe allergies, or anaphylaxis"; in (2)(b)(iii) at end inserted "as prescribed"; in (2)(c) after "necessary" substituted "to self-administer the asthma, severe allergy, or anaphylaxis medication" for "to administer the medication"; in (2)(d) after "asthma" inserted "severe allergies" and after "use" inserted "as prescribed"; in (5) before first "medication" inserted "asthma, severe allergy, or anaphylaxis" and before "dosage" inserted "expires or the"; in (6) after "asthma" inserted "severe allergies, or anaphylaxis" and after "medication" inserted "as prescribed"; in (7) after "nurse" inserted "asthma, severe allergy, or anaphylaxis medication may be kept by the pupil and" and near end after "asthma" inserted "severe allergy"; inserted (8) requiring student after using epinephrine during school hours

to report to school nurse or other adult at school for followup care; in (9) after “asthma” inserted “severe allergy, or anaphylaxis”; and made minor changes in style. Amendment effective July 1, 2007.

Chapter 393 in (7) near beginning inserted “an individual who has executed a caretaker relative medical authorization affidavit pursuant to 40-6-502”; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 442 in (7) near beginning after “parent” inserted “an individual who has executed a caretaker relative educational authorization affidavit pursuant to 20-5-503”; and made minor changes in style. Amendment effective July 1, 2007.

Applicability: Section 7, Ch. 393, L. 2007, provided: “[This act] applies to a caretaker relative, as defined in [section 1] [40-6-501], to whom a child is given by a parent after October 1, 2007, for care by the relative.”

Section 11, Ch. 442, L. 2007, provided: “[This act] applies to a caretaker relative to whom a minor is given by a parent on or after July 1, 2007, for care by the relative.”

Part 5 Enrollment of Pupil by Caretaker Relative

Part Compiler's Comments

Effective Date: Section 10, Ch. 442, L. 2007, provided that this part is effective July 1, 2007.

Applicability: Section 11, Ch. 442, L. 2007, provided: “[This act] applies to a caretaker relative to whom a minor is given by a parent on or after July 1, 2007, for care by the relative.”

20-5-501. Purpose — legislative intent — parental rights — definitions. (1) The legislature recognizes that the rights of parents to the custody and control of a child are based upon liberties secured by the United States and Montana constitutions and that a parent’s rights to that custody and control of a child are therefore normally supreme to the interests of other persons. The legislature also recognizes a growing phenomenon in which absent or otherwise unavailable parents have temporarily surrendered the custody and care of their children to a grandparent or other relative for lengthy periods of time. Regardless of the purpose of the absence, a child willfully surrendered to a relative for an extended time period still has the same needs as a child in the care of its parents. In this situation, a caretaker relative assumes responsibilities for the child but has no legal right of control over the child, a situation that interferes in the caretaker relative’s ability to perform routine functions of child rearing, including tending to the educational and educationally related medical needs of the child. It is therefore the purpose of the legislature in these instances to protect the rights of a child granted by Article II, section 15, of the Montana constitution by granting a caretaker relative limited authority for a child left in the relative’s care.

(2) It is the intent of the legislature that a caretaker relative given the responsibility of caring for a child with little or no warning and without any other provision having been made for the child’s care, such as the appointment of a guardian or the provision of a power of attorney, be granted authority to enroll the child in school, discuss with the school district the child’s educational progress, and consent to an educational service and to medical care for the child related to an educational service without superseding any parental rights regarding the child.

(3) This part is not intended to affect the rights and responsibilities of a parent, legal guardian, or other custodian regarding the child, does not grant legal custody of the child to the caretaker relative, and does not grant authority to the caretaker relative to consent to the marriage or adoption of the child or to receive notice of a medical procedure, including abortion, not consented to by the relative, if notice is required by law, for the child except as expressly provided in this section.

(4) For the purposes of this part, the following definitions apply:

(a) “Caretaker relative” or “relative” means an individual related by blood, marriage, or adoption by another individual to the child whose care is undertaken by the relative, but who is not a parent, foster parent, stepparent, or legal guardian of the child.

(b) “Caretaker relative educational authorization affidavit” or “affidavit” means an affidavit completed in compliance with 20-5-503.

(c) “Health care provider” means a person who provides medical care.

(d) “Medical care” means care by a health care provider, for which parental consent is normally required, for the prevention, diagnosis, or treatment of a mental, physical, or dental injury or disease.

(e) “Parent” means a biological parent, adoptive parent, or other legal guardian of the child whose parental rights have not been terminated.

History: En. Sec. 1, Ch. 442, L. 2007.

20-5-502. Enrollment by caretaker relative — residency — affidavit. (1) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child may, in accordance with this section, enroll the child in school using the rules of residence provided in 1-1-215 if:

- (a) in leaving the child with the caretaker relative, the parent expressed no definite time period in which the parent would return for the child;
- (b) the child is residing with the caretaker relative on a full-time basis;
- (c) the caretaker relative is unable to contact either of the parents following the voluntary leaving of the child with the relative or the parent or parents whom the relative is able to contact refuse to regain custody of the child after a written or oral request by the relative to do so;
- (d) no adequate provision, such as the appointment of a guardian ad litem or execution of a power of attorney, has otherwise been made for the educational needs of the child; and
- (e) a caretaker relative educational authorization affidavit is completed in compliance with 20-5-503.

(2) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child may enroll the child in school unless the child's residency with the caretaker relative is primarily for the purpose of:

- (a) attending a particular school; or
 - (b) participating in athletics at a particular school.
- (3) If the child was subject to formal disciplinary action, including suspension or expulsion, at the child's previous school, the school in which the child is to be enrolled may require the child to comply with a behavior contract as a condition of enrollment.
- (4) The school district may require additional reasonable evidence that the caretaker relative lives at the address provided in the affidavit.

History: En. Sec. 2, Ch. 442, L. 2007.

20-5-503. Caretaker relative educational authorization affidavit — use — immunity — format. (1) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child has the same authority as a custodial parent of the child to discuss with an educator the educational progress of the child, consent to an educational service, and consent to medical care related to an educational service for the child for which parental consent is usually required if a caretaker relative educational authorization affidavit is completed in compliance with this section.

(2) An affidavit is effective only if it is signed by the caretaker relative, under oath, before a notary public. A clear photographic copy of an affidavit completed in compliance with this section is sufficient in any instance in which an original is required by a school official or health care provider.

(3) Unless parental rights have been judicially terminated or unless the ability to give legal consent for the child to receive an educational service and any medical care related to the educational service for which parental consent is usually required has been granted to the caretaker relative pursuant to 40-4-211 and 40-4-228, a decision by a parent of the child communicated to a school official, a health care provider, or both, regarding the child supersedes a conflicting decision by a caretaker relative made pursuant to an affidavit completed in compliance with this section. However, a decision by a parent does not supersede a decision by a caretaker relative pursuant to an affidavit completed in compliance with this section if the decision by the parent endangers the life of the child. A school official or health care provider may require reasonable proof of authenticity of a decision by a parent intended to supersede a decision by a caretaker relative.

(4) (a) A public or private entity or individual who acts in good faith reliance on a caretaker relative educational authorization affidavit completed in compliance with this section and who has no actual knowledge of facts contrary to those indicated in the affidavit is not subject to civil liability or criminal prosecution or to a professional disciplinary procedure for an action that would have been proper if the facts had been as the entity or individual believed them to be.

(b) This subsection (4) applies even if an educational service or educationally related medical care, or both, are provided to a child against the wishes of a parent of that child if the person rendering the service does not have actual knowledge of the parent's wishes.

(5) A person who relies on an affidavit completed in compliance with this section has no obligation to make further inquiry or investigation.

(6) An affidavit completed in compliance with this section is effective for the earlier of:

(a) the end of the first school year after delivery of the affidavit to a school district;

(b) until it has been revoked by the caretaker relative; or

(c) until the child no longer resides with the caretaker relative.

(7) If the child ceases to live with the caretaker relative or the caretaker relative revokes the affidavit, the caretaker relative shall provide written notice of that fact to all persons to whom the caretaker relative has given the affidavit or to whom the caretaker relative has caused the affidavit to be given.

(8) This section does not relieve a person from a violation of other law, and this section does not affect the rights of a child's parent except as provided in this section.

(9) A caretaker relative educational authorization affidavit is invalid unless it is written in substantially the following form and contains the warning provided for in paragraph 5 of the format below:

**CARETAKER RELATIVE'S
EDUCATIONAL AUTHORIZATION AFFIDAVIT**
Use of this affidavit is authorized by 20-5-503, MCA.

1. **INSTRUCTIONS:** The completion and signing of the affidavit before a notary public are sufficient to authorize educational enrollment and services and school-related medical care for the named child. Please print clearly.

The child named below lives in my home, and I am 18 years of age or older.

a. Name of child:

b. Child's date of birth:

c. My name (caretaker relative):

d. My home address:

e. My relationship to the child (the caretaker relative must be an individual related by blood, marriage, or adoption by another individual to the child whose care is undertaken by the caretaker relative, but who is not a parent, foster parent, stepparent, or legal guardian of the child):

2. I hereby certify that this affidavit is not being used for the purpose of circumventing school residency laws, to take advantage of a particular academic program or athletic activity, to circumvent a disciplinary action of a previous school, or for an otherwise unlawful purpose.

3. My date and year of birth:

4. Check the following if true (all must be checked for this affidavit to apply):

☐ A parent of the child identified in paragraph 1a of this affidavit has left the child with me and has expressed no definite time period when the parent will return for the child.

☐ The child is now residing with me on a full-time basis.

☐ I am unable to locate or contact the parents of the child at this time to notify the parents of my intended authorization, or the parents refuse to regain custody of the child even though I have asked in writing that the parents do so.

☐ No adequate provision, such as appointment of a guardian ad litem or execution of a power of attorney, has been made for enrollment of the child in school, other educational services, or educationally related medical services.

5. **WARNING: DO NOT SIGN THIS FORM IF ANY OF THE STATEMENTS ABOVE ARE INCORRECT OR YOU WILL BE COMMITTING A CRIME PUNISHABLE BY A FINE, IMPRISONMENT, OR BOTH.**

6. I declare under penalty of false swearing under the laws of Montana that the foregoing is true and correct.

Signed this __ day of ____, 20__.

(Signature of caretaker relative)

(Signature, county, state, and seal of notary public)

7. NOTICES:

a. Completion of this affidavit does not affect the rights of the child's parents or legal guardian regarding the care, custody, and control of the child and does not mean that the caretaker relative has legal custody of the child.

b. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.

c. This affidavit is not valid for more than 6 months after the date on which it is signed by the caretaker relative.

8. ADDITIONAL INFORMATION:

a. TO CARETAKER RELATIVES: If the child stops living with you, you shall notify anyone to whom you have given this affidavit, as well as anyone who received the affidavit from someone else.

b. TO PUBLIC AND PRIVATE SCHOOL OFFICIALS AND PUBLIC AND PRIVATE HEALTH CARE PROVIDERS:

(1) A public or private school official or a public school district official may require additional reasonable evidence that the caretaker relative lives at the address provided in item 1d of the affidavit form.

(2) A public or private entity or individual who acts in good faith reliance upon a caretaker relative educational authorization affidavit to enroll a child in school or to provide educational services or educationally related medical care, or both, without actual knowledge of facts contrary to those indicated in the affidavit, is not subject to criminal prosecution or civil liability to any person, or subject to any professional disciplinary action, for reliance on an affidavit completed in compliance with 20-5-503, MCA.

History: En. Sec. 3, Ch. 442, L. 2007.

CHAPTER 6 SCHOOL DISTRICTS

Part 1 — School Districts—General Provisions

20-6-101. Definition of elementary and high school districts.

20-6-102. Confirmation of existing district boundaries.

20-6-103. Permanent record of district boundaries.

20-6-104. Moratorium on creation of new district — exceptions.

20-6-105. Transfer of territory from one district to another — hearing on effects of proposed transfer — burden of proof — standard of proof — appeal to district court.

20-6-106 through 20-6-109 reserved.

20-6-110. Student construction project — disclosure — immunity.

Part 2 — Elementary School Districts

20-6-201. Elementary district classification.

20-6-202. Time limitation for boundary changes.

20-6-203. Repealed.

20-6-204. Repealed.

20-6-205. Repealed.

20-6-206. Repealed.

20-6-207. Repealed.

20-6-208. Repealed.

20-6-209. Elementary district abandonment.

20-6-210. Repealed.

20-6-211. Repealed.

20-6-212. Repealed.

20-6-213. Repealed.

20-6-214. Boundary adjustments in elementary school districts.

20-6-215. Review of boundaries by county superintendent.

20-6-216. Repealed.

20-6-217. Repealed.

20-6-218. Relocation of elementary school within district.

Part 3 — High School Districts

- 20-6-301. High school district classification.
- 20-6-302. Repealed.
- 20-6-303. Repealed.
- 20-6-304. Repealed.
- 20-6-305. Repealed.
- 20-6-306. Repealed.
- 20-6-307. High school district abandonment.
- 20-6-308. Organization of joint high school district.
- 20-6-309. Repealed.
- 20-6-310. Repealed.
- 20-6-311. Repealed.
- 20-6-312. County high school unification.
- 20-6-313. Transactions after approved county high school unification.
- 20-6-314. Time limitations for boundary changes.
- 20-6-315. Repealed.
- 20-6-316. Repealed.
- 20-6-317. Repealed.
- 20-6-318. Repealed.
- 20-6-319. Repealed.
- 20-6-320. Repealed.
- 20-6-321. Repealed.
- 20-6-322. Boundary adjustments in high school districts.
- 20-6-323 and 20-6-324 reserved.
- 20-6-325. Repealed.
- 20-6-326. Procedure for creation of high school district solely for expansion into K-12 school district — trustee resolution.

Part 4 — School District Reorganization

- 20-6-401. Repealed.
- 20-6-402. Repealed.
- 20-6-403. Repealed.
- 20-6-404. Repealed.
- 20-6-405. Repealed.
- 20-6-406. Repealed.
- 20-6-407. Repealed.
- 20-6-408. Repealed.
- 20-6-409 reserved.
- 20-6-410. Tenure protected — hiring preference for employees.
- 20-6-411. Bonded indebtedness to remain with original territory except when assumed by election.
- 20-6-412. Property tax valuation after district boundary change.
- 20-6-413. Cash disposition when district ceases to exist — special levy for tuition debt.
- 20-6-414. Cash disposition when districts consolidated.
- 20-6-415. Repealed.
- 20-6-416. No cash disposition when territory transferred.
- 20-6-417. Property disposition when district boundaries changed.
- 20-6-418. Surrender of records when district ceases to exist.
- 20-6-419 and 20-6-420 reserved.
- 20-6-421. Conditions for district annexation.
- 20-6-422. District annexation.
- 20-6-423. District consolidation.
- 20-6-424. Interim governance of consolidated district.

Part 5 — Opening and Closing of Schools

- 20-6-501. Definition of various schools.
- 20-6-502. Opening or reopening of elementary school.
- 20-6-503. Opening or reopening of a high school.
- 20-6-504. Opening of a junior high school.
- 20-6-505. Opening a junior high school when high school district operates a county high school.
- 20-6-506. Budgeting and cost sharing when junior high school operated by elementary district and high school district operating county high school.
- 20-6-507. Opening of middle school.
- 20-6-508. Kindergarten through grade twelve system.
- 20-6-509. School closure.

Part 6 — School Property

- 20-6-601. Power to accept gifts.
- 20-6-602. Trustees' power over property.
- 20-6-603. Trustees' authority to acquire or dispose of sites and buildings — when election required.
- 20-6-604. Sale of property when resolution passed after hearing — appeal procedure.

- 20-6-605. Land acquired by conditional deed or at will or sufferance.
- 20-6-606. Letting contracts for school facilities.
- 20-6-607. Leasing district property and disposition of any rentals.
- 20-6-608. Authority and duty of trustees to insure district property.
- 20-6-609. Trustees' authority to acquire property by lease-purchase agreement.
- 20-6-610 through 20-6-620 reserved.
- 20-6-621. Selection of school sites — approval election.
- 20-6-622. Review and approval of school building plans and specifications.
- 20-6-623. Repealed.
- 20-6-624. School building plans and specifications approval before payment.
- 20-6-625. Authorization to lease buildings or land for school purposes.
- 20-6-626 through 20-6-630 reserved.
- 20-6-631. When contracts for architectural services required.
- 20-6-632. Repealed.
- 20-6-633. Hiring for architectural services authorized.
- 20-6-634. Tentative and final proposals — public meetings.
- 20-6-635. Contracts with Montana firms encouraged.
- 20-6-636. Prohibition against contingent fees — penalty.
- 20-6-637 through 20-6-639 reserved.
- 20-6-640. Long-term loans.

Part 7 — K-12 School Districts

- 20-6-701. K-12 school districts required — definition — procedure for creation — exception.
- 20-6-702. Funding for K-12 school districts.
- 20-6-703. Transitions after formation of K-12 school district.
- 20-6-704. Dissolution of K-12 school district.
- 20-6-705 through 20-6-710 reserved.
- 20-6-711. Tenure protected — hiring preference for noncertified employees.
- 20-6-712. Repealed.

Chapter Cross-References

- County Commissioners' authority to divide county into school districts, 7-5-2103.
- Interlocal Cooperation Commission, Title 7, ch. 11, part 2.
- Model school integrated pest and pesticide management safety program, Title 80, ch. 8, part 4.

Part 1 School Districts — General Provisions

20-6-101. Definition of elementary and high school districts. (1) As used in this title, except as defined in 20-9-402 for bonding purposes or unless the context clearly indicates otherwise, the term “district” means the territory, regardless of county boundaries, organized under the provisions of this title to provide public educational services under the jurisdiction of the trustees prescribed by this title. High school districts may encompass all or parts of the territory of one or more elementary districts.

(2) (a) An elementary district is a district organized for the purpose of providing public education for all grades up to and including grade 8 and for preschool programs and kindergartens. An elementary district may be inactive if the district attaches to a high school district under the provisions of 20-6-701 to form a K-12 school district.

(b) A high school district is a district organized for the purpose of providing those public educational services authorized by this title for all grades beyond grade 8, including postsecondary programs, except those programs administered by community college districts or the Montana university system. A high school district with an attached elementary district may provide the educational services for an elementary district through the procedures established in 20-6-701 through 20-6-703.

(3) An elementary district is known as “District No....., County” and a high school district, except a high school district where a county high school is operated, is known as “High School District No....., County”. A district is a body corporate and, as a body corporate, may sue and be sued, contract and be contracted with, and acquire, hold, use, and dispose of real or personal property for school purposes, within the limitations prescribed by law. Unless the context clearly indicates otherwise, the trustees of elementary districts and high school districts have the same types of powers, duties, and responsibilities authorized and imposed by the laws of Montana.

(4) As used in this title, unless the context clearly indicates otherwise, a county high school is a high school district that has not unified with an elementary district under 20-6-312.

History: En. 75-6501 by Sec. 160, Ch. 5, L. 1971; R.C.M. 1947, 75-6501; amd. Sec. 6, Ch. 555, L. 1991; amd. Sec. 14, Ch. 219, L. 1997.

Cross-References

Powers and duties of district trustees, 20-3-324.

K-12 school district defined, 20-6-701.

School bonds, Title 20, ch. 9, part 4.

20-6-102. Confirmation of existing district boundaries. All districts established under the laws of the state of Montana or the territory of Montana and defined by the boundaries described in the records of each county on January 26, 1971, shall be recognized as the districts of the state on such date.

History: En. 75-6502 by Sec. 161, Ch. 5, L. 1971; R.C.M. 1947, 75-6502.

20-6-103. Permanent record of district boundaries. (1) The board of county commissioners shall maintain a permanent record which plainly and definitely describes the boundaries of each district within the county. The county superintendent shall keep a transcript of the record in his office and shall be responsible for keeping the record current.

(2) If the county superintendent determines that the boundaries of any elementary district or high school district are in conflict or are incorrectly described, he shall change, harmonize, and describe them accurately, and he shall make a report of such boundary adjustments to the board of county commissioners. When the board of county commissioners approves a district boundary report submitted by the county superintendent, such boundaries shall be the legal boundaries and description of the district within the county. Whenever district boundaries are clarified under this section, the county superintendent shall supply the trustees of the district with the legal descriptions of the boundaries of their district.

History: En. 75-6504 by Sec. 163, Ch. 5, L. 1971; R.C.M. 1947, 75-6504.

20-6-104. Moratorium on creation of new district — exceptions. (1) Except as provided in subsections (2) and (3), a school district may not initiate the creation of a new elementary district or a new high school district.

(2) Pursuant to the provisions of 20-6-326, the trustees or the electors of an existing elementary district may initiate the creation of a new high school district solely for the purpose of expanding into a K-12 district.

(3) The moratorium in subsection (1) does not apply to a district that results from the procedure for the dissolution of a K-12 school district pursuant to 20-6-704.

History: En. Sec. 56, Ch. 633, L. 1993; amd. Sec. 2, Ch. 285, L. 1995; amd. Sec. 15, Ch. 219, L. 1997; amd. Sec. 2, Ch. 194, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 194 in (1) at beginning inserted exception clause; inserted (2) concerning elementary district creating high school district for expansion into K-12 district; in (3) at beginning substituted "The moratorium in subsection (1)" for "This section"; and made minor changes in style. Amendment effective April 12, 2007.

Effective Date — Applicability: Section 7, Ch. 194, L. 2007, provided: "[This act] is effective on passage and approval and applies to the creation of new districts on or after [the effective date of this act]." Approved April 12, 2007.

20-6-105. Transfer of territory from one district to another — hearing on effects of proposed transfer — burden of proof — standard of proof — appeal to district court.

(1) (a) Except as provided in 20-6-214, 20-6-215, 20-6-308, 20-6-322, and subsection (1)(b) of this section, a petition to transfer territory from one school district to another may be presented to the county superintendent if:

(i) the petition is signed by 60% of the registered electors qualified to vote at general elections in the territory proposed for transfer;

(ii) the territory to be transferred is contiguous to the district to which it is to be attached, includes taxable property, and has school-age children living in it;

(iii) the territory to be transferred is not located within 3 miles, over the shortest practicable route, of an operating school in the district from which it is to be transferred; and

(iv) the board of trustees of the school district that would receive the territory has approved the proposed transfer by a resolution adopted by a majority of the members of the board of trustees at a meeting for which proper notice was given.

(b) A petition to transfer territory to or from a K-12 district may not be presented to a county superintendent unless both school boards and the county superintendents have agreed in writing.

(2) Once a petition to transfer territory has been filed, an additional petition to transfer that territory may not be filed for 4 years.

(3) The petition for a transfer of territory must be delivered to the county superintendent and must:

(a) provide a legal description of the territory that is requested to be transferred and a description of the district to which the territory is to be transferred;

(b) state the reasons why the transfer is requested; and

(c) state the number of school-age children residing in the territory.

(4) If both the trustees of the receiving and transferring school districts have approved the proposed territory transfer in writing, the county superintendent shall grant the transfer.

(5) For any petition that meets the criteria specified in subsection (1) and contains the information required by subsection (3) but that has not been approved in writing by the board of trustees of the school district that would transfer the territory, the county superintendent shall:

(a) not more than 40 days after receipt of the petition, set a place, date, and time for a hearing to consider the petition; and

(b) give notice of the place, date, and time of the hearing. The notice must be posted in the districts affected by the petition for the transfer of territory in the manner prescribed in this title for notices for school elections, with at least one notice posted in the territory to be transferred. Notice must also be delivered to the board of trustees of the school district from which the territory is to be transferred.

(6) The county superintendent shall conduct a hearing as scheduled, and any resident, taxpayer, or representative of the receiving or transferring district must, upon request, be heard. At the hearing, the petitioners have the initial burden of presenting evidence on the proposed transfer's effect on:

(a) the educational opportunity for the students in the receiving and transferring districts, including but not limited to:

(i) class size;

(ii) ability to maintain demographic diversity;

(iii) local control;

(iv) parental involvement; and

(v) the capability of the receiving district to provide educational services;

(b) student transportation, including but not limited to:

(i) safety;

(ii) cost; and

(iii) travel time of students;

(c) the economic viability of the proposed new districts, including but not limited to:

(i) the existence of a significant burden on the taxpayers of the district from which the territory will be transferred;

(ii) the significance of any loss in state funding for the students in both the receiving and transferring districts;

(iii) the viability of the future bonding capacity of the receiving and transferring districts, including but not limited to the ability of the receiving district and the transferring district to meet minimum bonding requirements;

(iv) the ability of the receiving district and the transferring district to maintain sufficient reserves; and

(v) the cumulative effect of other transfers of territory out of the district in the previous 8 years on the taxable value of the district from which the territory is to be transferred. In cases where the cumulative effect of other transfers of territory out of the district in the previous 8 years is equal to or greater than 25% of the district's taxable value, the following additional factors must be considered and weighed in the decision:

(A) the district's rate of passage of discretionary levies placed before the voters over the previous 8 years;

(B) the district's reduction or elimination of instructional staff or programs over the previous 8 years; and

(C) any increase in district taxes over the previous 8 years and the likely increase in district taxes if the transfer is granted.

(7) After receiving evidence from both the proponents and opponents of the proposed territory transfer on the effects described in subsection (6), the county superintendent shall, within 30 days after the hearing, issue findings of fact, conclusions of law, and an order.

(8) If, based on a preponderance of the evidence, the county superintendent determines that the evidence on the effects described in subsection (6) supports a conclusion that a transfer of the territory is in the best and collective interest of students in the receiving and transferring districts and does not negatively impact the ability of the districts to serve those students, the county superintendent shall grant the transfer. If the county superintendent determines that, based on a preponderance of the evidence presented at the hearing, a transfer of the territory is not in the best and collective interest of students in the receiving and transferring districts and will negatively impact the ability of the districts to serve those students, the county superintendent shall deny the territory transfer.

(9) The decision of the county superintendent is final 30 days after the date of the decision unless it is appealed to the district court by a resident, taxpayer, or representative of either district affected by the petitioned territory transfer. The county superintendent's decision must be upheld unless the court finds that the county superintendent's decision constituted an abuse of discretion under this section.

(10) Whenever a petition to transfer territory from one district to another district creates a joint district or affects the boundary of an existing joint district, the petition to transfer territory must be delivered to the county superintendent of the county in which the territory proposed to be transferred is located. The county superintendent shall notify any other county superintendents of counties with districts affected by the petition, and the duties prescribed in this section for the county superintendent must be performed jointly. If the number of county superintendents involved is an even number, the county superintendents shall jointly appoint an additional county superintendent from an unaffected county to join them in conducting the hearing required in subsection (6) and in issuing the decision required in subsection (8). The decision issued under subsection (8) must be made by a majority of the county superintendents.

(11) A petition seeking to transfer territory out of or into a K-12 district must propose the transfer of territory for both elementary and high school purposes. In the case of a proposed transfer out of or into a K-12 district, a petition that fails to propose the transfer of territory for both elementary and high school purposes is invalid for the purposes of this section.

History: En. Sec. 1, Ch. 151, L. 2003; amd. Sec. 1, Ch. 284, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 284 in (1)(a) after "20-6-322" inserted "and subsection (1)(b) of this section"; inserted (1)(b) prohibiting presentation of petition to transfer territory to or from K-12 district unless both school boards and county superintendents have agreed in writing; in (2) at beginning deleted "On or before March 27, 2003"; and made minor changes in style. Amendment effective April 26, 2007.

20-6-106 through 20-6-109 reserved.

20-6-110. Student construction project — disclosure — immunity. (1) The entity that transfers title to a construction project constructed as part of a public education program shall disclose the fact that the construction project was constructed as part of a public education program on at least one document, form, or application executed prior to or contemporaneously with an offer for the purchase, sale, rental, or lease of the construction project. The disclosure provided for in this subsection must be in the following form or in a substantially similar form: "Student Construction Project: This property was constructed as part of a public education program and was in whole or in part constructed by students. The school district or public postsecondary institution responsible for the education program is not liable for civil damages resulting from construction projects constructed as part of a public education program except in cases of gross negligence or willful misconduct."

(2) Except in cases of gross negligence or willful misconduct, a school district or public postsecondary institution is not liable for civil damages resulting from a construction project

constructed as part of a public education program if the disclosure required in subsection (1) is made.

(3) As used in this section, "public education program" means a program operated by a public school or a public postsecondary institution.

History: En. Sec. 1, Ch. 521, L. 2005.

Part 2 Elementary School Districts

20-6-201. Elementary district classification. (1) Each elementary district shall have a classification of:

- (a) first class, if it has a population of 6,500 or more;
- (b) second class, if it has a population of 1,000 or more but less than 6,500; or
- (c) third class, if it has a population of less than 1,000.

(2) The population of an elementary district must be determined by the county superintendent on the basis of the best available population information for the district.

(3) The county superintendent shall establish the classification of each elementary district in the county on the basis of the population determined for the district and the district classification criteria prescribed in this section. Whenever the population of an elementary district increases or decreases requiring an adjustment of the district classification according to the criteria prescribed in this section, the county superintendent shall declare the district's classification to be changed in accordance with the determined population, except that the classification of an elementary district may not be changed more than once every 5 years.

(4) Whenever the county superintendent changes an elementary district's classification with the result that a larger number of trustees is required on the elementary board of trustees, the increased number of trustee positions must be filled in the manner provided for in 20-3-302.

History: En. 75-6503 by Sec. 162, Ch. 5, L. 1971; amd. Sec. 1, Ch. 353, L. 1971; amd. Sec. 3, Ch. 137, L. 1973; R.C.M. 1947, 75-6503(part); amd. Sec. 2, Ch. 137, L. 1993.

Cross-References

Election of trustees upon change of district classification, 20-3-302, 20-3-343.

Number of trustee positions in elementary districts, 20-3-341.

20-6-202. Time limitation for boundary changes. An elementary district may not be created and elementary district boundaries may not be changed between the first day of January and the fourth Monday of August of any calendar year except when:

- (1) the entire territory of a district is annexed or attached to another district;
- (2) the entire territory of the portion of a joint district located in one county is annexed or attached to another district; or
- (3) two or more districts are consolidated in their entirety.

History: En. 75-6505 by Sec. 164, Ch. 5, L. 1971; amd. Sec. 25, Ch. 388, L. 1975; R.C.M. 1947, 75-6505; amd. Sec. 7, Ch. 237, L. 2001.

20-6-203. Repealed. Sec. 12, Ch. 510, L. 2005.

History: En. 75-6506 by Sec. 165, Ch. 5, L. 1971; R.C.M. 1947, 75-6506.

20-6-204. Repealed. Sec. 12, Ch. 510, L. 2005.

History: En. 75-6507 by Sec. 166, Ch. 5, L. 1971; R.C.M. 1947, 75-6507.

20-6-205. Repealed. Sec. 12, Ch. 510, L. 2005.

History: En. 75-6508 by Sec. 167, Ch. 5, L. 1971; amd. Sec. 6, Ch. 91, L. 1973; R.C.M. 1947, 75-6508.

20-6-206. Repealed. Sec. 12, Ch. 510, L. 2005.

History: En. 75-6509 by Sec. 168, Ch. 5, L. 1971; amd. Sec. 5, Ch. 83, L. 1971; amd. Sec. 1, Ch. 155, L. 1974; R.C.M. 1947, 75-6509.

20-6-207. Repealed. Sec. 12, Ch. 510, L. 2005.

History: En. 75-6510 by Sec. 169, Ch. 5, L. 1971; R.C.M. 1947, 75-6510.

20-6-208. Repealed. Sec. 12, Ch. 510, L. 2005.

History: En. 75-6511 by Sec. 170, Ch. 5, L. 1971; R.C.M. 1947, 75-6511.

20-6-209. Elementary district abandonment. (1) The county superintendent shall declare an elementary district to be abandoned and order the attachment of the territory of the district to a contiguous district or districts of the county or, with the consent of the county

superintendent of an adjacent county, to a contiguous district or districts in the adjacent county when:

(a) a school has not been operated by a district for at least the minimum aggregate hours under the provisions of 20-1-301 for each of 3 consecutive school fiscal years or a lesser number of aggregate hours as approved by the board of trustees under the provisions of 20-9-806; or

(b) there is an insufficient number of residents who are qualified electors of the district that can serve as the trustees and clerk of the district so that a legal board of trustees can be organized.

(2) The county superintendent shall notify the elementary district that has not operated a school for 2 consecutive years before the first day of the third year that the failure to operate a school for the minimum aggregate hours or a lesser number of aggregate hours than approved by the board of trustees under the provisions of 20-9-806 during the ensuing school fiscal year constitutes grounds for abandonment of the district at the conclusion of the succeeding school fiscal year. Failure by the county superintendent to provide the notification does not constitute a waiver of the abandonment requirement prescribed in subsection (1)(a).

(3) Any abandonment under subsection (1)(a) becomes effective on July 1. Any abandonment of an elementary district under subsection (1)(b) becomes effective immediately on the date of the abandonment order.

History: En. 75-6512 by Sec. 171, Ch. 5, L. 1971; R.C.M. 1947, 75-6512; amd. Sec. 7, Ch. 288, L. 1979; amd. Sec. 5, Ch. 430, L. 1997; amd. Sec. 10, Ch. 138, L. 2005; amd. Sec. 8, Ch. 510, L. 2005.

Cross-References

Trustees of district affected by boundary change, 20-3-312.

School isolation, 20-9-302.

Purpose and establishment of nonoperating fund, 20-9-505.

Budgeting and net levy requirement for nonoperating fund, 20-9-506.

20-6-210. Repealed. Sec. 12, Ch. 510, L. 2005.

History: En. 75-6513 by Sec. 172, Ch. 5, L. 1971; amd. Sec. 4, Ch. 277, L. 1977; R.C.M. 1947, 75-6513.

20-6-211. Repealed. Sec. 12, Ch. 510, L. 2005.

History: En. 75-6514 by Sec. 173, Ch. 5, L. 1971; R.C.M. 1947, 75-6514.

20-6-212. Repealed. Sec. 80, Ch. 130, L. 2005.

History: En. 75-6515 by Sec. 174, Ch. 5, L. 1971; R.C.M. 1947, 75-6515.

20-6-213. Repealed. Sec. 7, Ch. 151, L. 2003.

History: En. 75-6516 by Sec. 175, Ch. 5, L. 1971; amd. Sec. 6, Ch. 83, L. 1971; amd. Sec. 1, Ch. 256, L. 1975; R.C.M. 1947, 75-6516; amd. Sec. 1, Ch. 287, L. 1979; amd. Sec. 1, Ch. 145, L. 1991; amd. Sec. 1, Ch. 517, L. 1991; amd. Sec. 1, Ch. 403, L. 1997.

20-6-214. Boundary adjustments in elementary school districts. The trustees of an elementary school district may, by resolution, request a change in the boundaries between their district and an adjacent district. If the trustees request a transfer by resolution, the territory proposed for transfer must conform to the provisions of 20-6-105(1) and (2) and the resolution must include information outlined in 20-6-105(3). The resolution must be addressed to the county superintendent of schools who, upon receiving the resolution, shall proceed to a hearing as set forth in 20-6-105(6).

History: En. Sec. 1, Ch. 29, L. 1974; R.C.M. 1947, 75-6516.1; amd. Sec. 3, Ch. 151, L. 2003.

Cross-References

Trustees of district affected by boundary change, 20-3-312.

20-6-215. Review of boundaries by county superintendent. A county superintendent of schools shall, at least once every 3 years, review the existing elementary school district boundaries in the county. The review and any recommended boundary changes must include information that the territory proposed for transfer complies with the provisions of 20-6-105(1) through (3) and must be presented by the superintendent at a hearing conducted under 20-6-105(6). If the superintendent orders a boundary change after the hearing, the superintendent shall forward copies of the review and the testimony at the hearing to the board of county commissioners and the state superintendent of public instruction.

History: En. Sec. 2, Ch. 29, L. 1974; R.C.M. 1947, 75-6516.2; amd. Sec. 4, Ch. 151, L. 2003.

20-6-216. Repealed. Sec. 22, Ch. 219, L. 1997.

History: En. 75-6517 by Sec. 176, Ch. 5, L. 1971; amd. Sec. 4, Ch. 137, L. 1973; amd. Sec. 2, Ch. 256, L. 1975; R.C.M. 1947, 75-6517; amd. Sec. 1, Ch. 337, L. 1981; amd. Sec. 1, Ch. 430, L. 1981; amd. Sec. 1, Ch. 371, L. 1987.

20-6-217. Repealed. Sec. 22, Ch. 219, L. 1997.

History: En. 75-6518 by Sec. 177, Ch. 5, L. 1971; R.C.M. 1947, 75-6518; amd. Sec. 2, Ch. 430, L. 1981; amd. Sec. 2, Ch. 371, L. 1987.

20-6-218. Relocation of elementary school within district. The trustees of an elementary district may relocate an elementary school that is currently operating within the district if the relocation will be more convenient for the majority of the pupils attending. The provisions of 20-6-502 relating to opening or reopening a school do not apply. The provisions of 20-6-603 apply if the new site has not been previously approved as required by 20-6-603.

History: En. Sec. 1, Ch. 281, L. 1989.

Part 3 High School Districts

20-6-301. High school district classification. The classification of a high school district must be the same as the classification of the elementary district (20-6-201) where the high school building is located. If there is more than one elementary district in which operating high school buildings are located, the classification of the high school district must be the same as the classification of the elementary district described in 20-6-201 in which the operating high school building that was first constructed is located. Whenever the classification of such elementary district is changed, the classification of a high school district must be changed accordingly and the county superintendent shall adjust the number of additional high school district trustee positions in accordance with the method prescribed in 20-3-354 for the determination of the number of additional trustee positions required for a high school district. An increased number of trustee positions must be filled by the appointment of the county superintendent, and those positions are subject to election at the next regular trustee election. When the number of positions is decreased, the next additional high school trustee positions that become vacant under any circumstances may not be filled until the number of trustee positions has been reduced to the number required by law.

History: En. 75-6503 by Sec. 162, Ch. 5, L. 1971; amd. Sec. 1, Ch. 353, L. 1971; amd. Sec. 3, Ch. 137, L. 1973; R.C.M. 1947, 75-6503(part); amd. Sec. 2, Ch. 91, L. 2005.

Cross-References

Legislative intent to elect less than majority of trustees, 20-3-302.

Number of trustee positions in elementary and high school districts, 20-3-341, 20-3-351.

Request and determination of number of additional high school district trustee positions, 20-3-352.

20-6-302. Repealed. Sec. 13, Ch. 617, L. 1983.

History: En. 75-6519 by Sec. 178, Ch. 5, L. 1971; R.C.M. 1947, 75-6519.

20-6-303. Repealed. Sec. 22, Ch. 219, L. 1997.

History: En. 75-6520 by Sec. 179, Ch. 5, L. 1971; amd. Sec. 1, Ch. 44, L. 1971; R.C.M. 1947, 75-6520.

20-6-304. Repealed. Sec. 22, Ch. 219, L. 1997.

History: En. 75-6521 by Sec. 180, Ch. 5, L. 1971; R.C.M. 1947, 75-6521; amd. Sec. 9, Ch. 617, L. 1983.

20-6-305. Repealed. Sec. 13, Ch. 617, L. 1983.

History: En. 75-6522 by Sec. 181, Ch. 5, L. 1971; R.C.M. 1947, 75-6522.

20-6-306. Repealed. Sec. 13, Ch. 617, L. 1983.

History: En. 75-6523 by Sec. 182, Ch. 5, L. 1971; amd. Sec. 12, Ch. 266, L. 1977; R.C.M. 1947, 75-6523.

20-6-307. High school district abandonment. Within 6 months after a high school district fails to operate an accredited high school within its boundaries for a period of 1 year, the county superintendent shall order the high school district abandoned. At least 20 days before issuing an abandonment order, the county superintendent shall notify the trustees of the high school district of the impending abandonment. When the order is issued, the county superintendent shall also order the attachment of the territory of each elementary district of the abandoned high school district to another high school district or districts of the county or, with the consent of the county superintendent of an adjacent county, to another contiguous high school district or districts in the adjacent county.

History: En. 75-6524 by Sec. 183, Ch. 5, L. 1971; R.C.M. 1947, 75-6524; amd. Sec. 9, Ch. 510, L. 2005.

Cross-References

School fiscal year, 20-1-301.

School isolation, 20-9-302.

Purpose and establishment of nonoperating fund, 20-9-505.

Budgeting and net levy requirement for nonoperating fund, 20-9-506.

20-6-308. Organization of joint high school district. The boundaries of a high school district that encompass a county's portion of a joint elementary district where an elementary school is operated may be changed to establish a joint high school district. The high school district boundary change must be a transfer of all the territory located in another county's portion of the same joint elementary district and must be made pursuant to the procedures provided in 20-6-105.

History: En. 75-6525 by Sec. 184, Ch. 5, L. 1971; amd. Sec. 3, Ch. 256, L. 1975; R.C.M. 1947, 75-6525; amd. Sec. 5, Ch. 151, L. 2003.

20-6-309. Repealed. Sec. 7, Ch. 151, L. 2003.

History: En. 75-6526 by Sec. 185, Ch. 5, L. 1971; R.C.M. 1947, 75-6526.

20-6-310. Repealed. Sec. 13, Ch. 617, L. 1983.

History: En. 75-6527 by Sec. 186, Ch. 5, L. 1971; R.C.M. 1947, 75-6527.

20-6-311. Repealed. Sec. 22, Ch. 219, L. 1997.

History: En. 75-6528 by Sec. 187, Ch. 5, L. 1971; R.C.M. 1947, 75-6528; amd. Sec. 10, Ch. 617, L. 1983.

20-6-312. County high school unification. (1) Any county high school may be unified with the elementary district where the county high school building is located to establish a unified school system under a unified board of trustees. The territory of an existing joint high school district must remain a part of the joint high school district.

(2) A proposition to unify a county high school with the elementary district where the county high school building is located must be introduced whenever:

(a) the trustees of the county high school and the trustees of the elementary district individually pass resolutions requesting the county superintendent to order an election to consider a unification proposition; or

(b) not less than 20% of the electors of the high school district where the county high school is located who are qualified to vote under the provisions of 20-20-301 petition the county superintendent to order an election to consider a unification proposition.

(3) When the county superintendent has received the trustees' resolutions or a valid petition, the county superintendent shall, within 10 days after the receipt of the last resolution or petition and under the provisions of 20-20-201, order the county high school to call an election to consider a unification proposition. The trustees of the county high school shall call and conduct an election in the manner prescribed in this title for school elections. An elector who may vote on the unification proposition must be qualified to vote under the provisions of 20-20-301. The ballot for a county high school unification proposition must be substantially in the following form:

"OFFICIAL BALLOT

COUNTY HIGH SCHOOL UNIFICATION ELECTION

Shall.... County High School be unified with District No....., County to establish a unified school system under a unified board of trustees?

☐ FOR the unification of the county high school.

☐ AGAINST the unification of the county high school."

(4) When the county superintendent receives the election certificate from the trustees of the county high school, the county superintendent shall issue an order declaring the unification of the county high school with the elementary district identified on the ballot as of the next July 1, if a majority of those electors voting at the election have voted for the unification proposition.

(5) If a majority of those electors voting at the election have voted against the unification proposition, the county superintendent shall order the disapproval of the unification proposition.

History: En. 75-6538 by Sec. 197, Ch. 5, L. 1971; R.C.M. 1947, 75-6538; amd. Sec. 16, Ch. 219, L. 1997.

Cross-References

Mail ballot elections prohibited, 13-19-104.

School elections, Title 20, ch. 20.

20-6-313. Transactions after approved county high school unification. (1) Whenever a county high school is unified with the elementary district where the county high school building is located, the following transactions must be completed on or before the July 1 when the unification becomes effective:

(a) The county high school trustees, who do not have the capacity to govern the high school district upon unification, shall surrender all minutes, documents, and other records of the county high school to the trustees of the high school district.

(b) The county superintendent shall order the establishment of additional high school trustee nominating areas in the manner prescribed in 20-3-352 and 20-3-353, if requested to do so by a majority of the outlying elementary districts located in the high school district. When the county superintendent establishes the areas, the county superintendent shall appoint additional high school district trustees from each area, who shall hold office until a successor is elected at the next regular school election and qualified.

(c) The county treasurer, after allowing for any outstanding or registered warrants, shall transfer all end-of-the-year fund cash balances of the county high school to similar funds established for the high school district. All previous years' taxes levied and collected for the county high school shall be credited to the appropriate fund of the high school district.

(2) All county high school bonds outstanding at the time of unification shall remain the obligation of the county or that portion of the county against which the bonds were originally issued. The high school district is responsible for the maintenance of the debt service fund for the bonds. It is the duty of the board of county commissioners and the trustees of the high school district to perform the duties prescribed in the school budgeting and bond redemption provisions of this title for the redemption and interest payments of the county high school bonds in the same manner and by the same means as though the county high school had not been unified.

History: En. 75-6539 by Sec. 198, Ch. 5, L. 1971; R.C.M. 1947, 75-6539; amd. Sec. 17, Ch. 219, L. 1997.

Cross-References

Trustees of district affected by boundary change, 20-3-312.

20-6-314. Time limitations for boundary changes. A high school district may not be created and a high school district boundary may not be changed between the first day of January and the fourth Monday of August of any calendar year except when:

(1) the entire territory of a high school district is annexed or attached to another high school district;

(2) the entire territory or portion of a joint high school district located in one county is annexed or attached to another high school district; or

(3) two or more districts are consolidated in their entirety.

History: En. Sec. 1, Ch. 617, L. 1983; amd. Sec. 10, Ch. 22, L. 1997; amd. Sec. 2, Ch. 403, L. 1997; amd. Sec. 8, Ch. 237, L. 2001.

20-6-315. Repealed. Sec. 12, Ch. 510, L. 2005.

History: En. Sec. 2, Ch. 617, L. 1983.

20-6-316. Repealed. Sec. 12, Ch. 510, L. 2005.

History: En. Sec. 3, Ch. 617, L. 1983.

20-6-317. Repealed. Sec. 12, Ch. 510, L. 2005.

History: En. Sec. 4, Ch. 617, L. 1983.

20-6-318. Repealed. Sec. 12, Ch. 510, L. 2005.

History: En. Sec. 5, Ch. 617, L. 1983.

20-6-319. Repealed. Sec. 12, Ch. 510, L. 2005.

History: En. Sec. 6, Ch. 617, L. 1983.

20-6-320. Repealed. Sec. 7, Ch. 151, L. 2003.

History: En. Sec. 7, Ch. 617, L. 1983; amd. Sec. 1, Ch. 299, L. 1987; amd. Sec. 2, Ch. 517, L. 1991; amd. Sec. 3, Ch. 403, L. 1997.

20-6-321. Repealed. Sec. 12, Ch. 510, L. 2005.

History: En. Sec. 8, Ch. 617, L. 1983; amd. Sec. 2, Ch. 15, L. 1985.

20-6-322. Boundary adjustments in high school districts. The trustees of a high school district may, by resolution, request a change in the boundaries between their district and

an adjacent district. If the trustees request a transfer by resolution, the territory proposed for transfer must conform to the provisions of 20-6-105(1) and (2) and the resolution must include information outlined in 20-6-105(3). The resolution must be addressed to the county superintendent of schools who, upon receiving the resolution, shall proceed to a hearing as provided in 20-6-105(6).

History: En. Sec. 5, Ch. 403, L. 1997; amd. Sec. 6, Ch. 151, L. 2003.

20-6-323 and 20-6-324 reserved.

20-6-325. Repealed. Sec. 22, Ch. 219, L. 1997.

History: En. Sec. 1, Ch. 585, L. 1985; amd. Sec. 1, Ch. 226, L. 1987; amd. Sec. 3, Ch. 371, L. 1987.

20-6-326. Procedure for creation of high school district solely for expansion into K-12 school district — trustee resolution. (1) An existing elementary district may create a high school district solely for the purpose of expanding an elementary district into a K-12 district only if:

- (a) the nearest elementary school building is located at a distance of at least 40 miles from the nearest accessible high school;
- (b) the trip from the nearest elementary school building to the nearest accessible high school is 60 minutes or more over the shortest passable route;
- (c) periodically during the school year, the condition of the road makes it impractical to attend the nearest accessible high school; and
- (d) at least 50 high school students reside in the elementary district; and
- (e) the taxable valuation and boundaries of the combining elementary and high school district are the same.

(2) The creation of a new high school district may be requested by the trustees of an existing elementary district through passage of a resolution that includes the information outlined in 20-6-105(3) and requests the county superintendent to order an election to allow the electors of the elementary district to consider the proposition to create a high school district solely for the purpose of expanding the elementary school district into a K-12 district. Approval of the proposition results in a tax levy for payments as provided in subsection (6)(b).

(3) If the proposition for the expansion and the transition levy provided for in 20-9-502(6) is approved by the electors of the elementary district and the trustees issue a certificate of election as provided in 20-20-416, the county superintendent shall order the creation of the high school district and oversee the expansion of the high school district into a K-12 district pursuant to 20-6-701.

(4) The county superintendent shall send a copy of the order to the board of county commissioners and to the trustees of the districts affected by the creation of the district.

(5) If a new district is created, the effective date of its creation is the following July 1. The trustees of the elementary district must be designated as the trustees of the new K-12 district.

(6) Until the first school fiscal year in which the new K-12 district enrolls high school students in all grades, the existing high school district shall provide high school instruction to students residing in the newly created K-12 district with the K-12 district paying the existing high school district:

(a) tuition and transportation charged pursuant to the provisions of 20-5-320 and 20-5-321; and

(b) an amount equal to the BASE general fund mills for the existing high school district assessed against the taxable valuation in the new K-12 district and funded using a building reserve fund levy for transition costs as provided in 20-9-502. The payment to the existing high school district must be deposited in the district general fund and used to reduce the BASE budget levy.

(7) If bonded indebtedness has been approved by the voters of the existing high school district prior to April 12, 2007, but the bonds have not been sold prior to the creation of the new K-12 district, then the future indebtedness of those bonds when those bonds are sold must be paid by levies on the original territory.

(8) If the K-12 school district does not open and operate a high school within 3 years after the effective date of the creation of the new district, the order of the county superintendent creating a new district under this section is void, the new district ceases to exist, and the trustees

of the new district have no capacity to act. Those trustees retain authority as trustees of the elementary district.

History: En. Sec. 1, Ch. 194, L. 2007.

Compiler's Comments

Effective Date — Applicability: Section 7, Ch. 194, L. 2007, provided: "[This act] is effective on passage and approval and applies to the creation of new districts on or after [the effective date of this act]." Approved April 12, 2007.

Part 4 School District Reorganization

20-6-401. Repealed. Sec. 1, Ch. 36, Sp. L. November 1993.

History: En. Sec. 2, Ch. 125, L. 1971; R.C.M. 1947, 75-6541; amd. Sec. 1, Ch. 205, L. 1981; amd. Sec. 1, Ch. 185, L. 1985; amd. Sec. 4, Ch. 337, L. 1989; amd. Sec. 13, Ch. 11, Sp. L. June 1989.

20-6-402. Repealed. Sec. 1, Ch. 36, Sp. L. November 1993.

History: En. Sec. 1, Ch. 125, L. 1971; R.C.M. 1947, 75-6540; amd. Sec. 11, Ch. 617, L. 1983.

20-6-403. Repealed. Sec. 1, Ch. 36, Sp. L. November 1993.

History: En. Sec. 3, Ch. 125, L. 1971; R.C.M. 1947, 75-6542; amd. Sec. 12, Ch. 617, L. 1983.

20-6-404. Repealed. Sec. 1, Ch. 36, Sp. L. November 1993.

History: En. Sec. 4, Ch. 125, L. 1971; R.C.M. 1947, 75-6543.

20-6-405. Repealed. Sec. 1, Ch. 36, Sp. L. November 1993.

History: En. Sec. 5, Ch. 125, L. 1971; R.C.M. 1947, 75-6544.

20-6-406. Repealed. Sec. 1, Ch. 36, Sp. L. November 1993.

History: En. Sec. 6, Ch. 125, L. 1971; R.C.M. 1947, 75-6545; amd. Sec. 30, Ch. 703, L. 1985.

20-6-407. Repealed. Sec. 1, Ch. 36, Sp. L. November 1993.

History: En. Sec. 7, Ch. 125, L. 1971; R.C.M. 1947, 75-6546.

20-6-408. Repealed. Sec. 1, Ch. 36, Sp. L. November 1993.

History: En. Sec. 8, Ch. 125, L. 1971; R.C.M. 1947, 75-6547.

20-6-409 reserved.

20-6-410. Tenure protected — hiring preference for employees. (1) Whenever two or more school districts consolidate or join through annexation to organize into a single district in the manner provided for in Title 20, chapter 6, a principal, teacher, or other certified employee of the school districts who has a right of tenure under Montana law must be given absolute preference in hiring for the first school fiscal year for any vacant position with the consolidated or enlarged district for which the employee is qualified with the required certification endorsements. Upon acceptance of a position, the certified employee continues to have tenure in the consolidated or enlarged district and the board of trustees of the consolidated or enlarged school district in which the person will perform duties shall recognize and give effect to the right of tenure.

(2) A noncertified, nonprobationary employee of a school district that consolidates or joins another district through annexation must be given preference in hiring for the first school fiscal year for any vacant position with the consolidated or enlarged district for which the employee has substantially equal qualifications and, upon acceptance of a position, may not be given probationary status.

History: En. Sec. 1, Ch. 497, L. 1991.

20-6-411. Bonded indebtedness to remain with original territory except when assumed by election. Whenever district boundaries are changed in any manner prescribed in this title, the existing bonded indebtedness against any district or territory affected by a change of boundaries shall remain the indebtedness of the original territory against which such bonds were issued and shall be paid by levies on the original territory, except when elementary districts are consolidated with the mutual assumption of bonded indebtedness or when an elementary district is annexed with a joint assumption of the annexing district's bonded indebtedness with the annexing district. Any moneys to the credit of the debt service fund of a district when its boundaries are changed shall be used to pay the existing bond principal and

interest of the original territory issuing such bonds as it becomes due or for bond redemption under the bonding provisions of this title.

History: En. 75-6529 by Sec. 188, Ch. 5, L. 1971; R.C.M. 1947, 75-6529.

Cross-References

Redemption of bonds — investment of debt service fund money, 20-9-441.

20-6-412. Property tax valuation after district boundary change. The property tax valuation used under the provisions of 20-9-142 for the purposes of fixing the tax levies, except the debt service fund tax levy, for a district that has had a boundary change at any time before the fourth Monday in August shall include the property tax valuation of any territory added to the district by such boundary change or exclude the property tax valuation of any territory detached from the district by such boundary change.

History: En. 75-6530 by Sec. 189, Ch. 5, L. 1971; R.C.M. 1947, 75-6530; amd. Sec. 4, Ch. 133, L. 1993.

20-6-413. Cash disposition when district ceases to exist — special levy for tuition debt. Whenever a district ceases to exist in any manner prescribed in this title, except when districts are consolidated, the cash on hand to the credit of the funds of the district and the debts of the former district must be allocated in the following manner:

(1) Any cash to the credit of the district must be used to pay any debts of the district, including bonded indebtedness, except that any cash available in the debt service fund must be used first to pay bond interest and all outstanding bonds.

(2) If any cash remains to the credit of the district after paying its debts, the cash must be transferred by the county treasurer to the credit of the district or districts assuming its territory. When the territory is assumed by more than one district, the remaining cash must be prorated between the districts on the basis of the taxable value of the territory assumed by each district as determined by the county superintendent.

(3) If any tuition debt remains as an obligation of the district, the tuition debt is the obligation of the taxable property of the discontinued district, except when the tuition debt has been assumed by the consolidated or annexing district. The tuition debt must be financed by a mill levy on the property of the discontinued district and paid from these proceeds by the county superintendent.

(4) If any debts, other than bonded indebtedness and tuition, remain as an obligation of the district after the cash has been utilized under the provisions of subsection (1), the debts must be assigned in the same manner prescribed for the transfer of cash under subsection (2).

History: En. 75-6532 by Sec. 191, Ch. 5, L. 1971; amd. Sec. 5, Ch. 137, L. 1973; R.C.M. 1947, 75-6532; amd. Sec. 1, Ch. 127, L. 1989; amd. Sec. 1, Ch. 214, L. 1999.

20-6-414. Cash disposition when districts consolidated. Whenever two or more districts are consolidated without the mutual assumption of bonded indebtedness, all cash and debts, other than cash credited to the debt service fund and debts for bonded indebtedness, shall be credited or debited to the same types of funds of the consolidated district as the funds from which they were transferred by the county treasurer. In addition, when two or more elementary districts are consolidated with the mutual assumption of bonded indebtedness, the cash credited to the debt service fund and the bonded indebtedness also shall be transferred to a similar fund of the consolidated district.

History: En. 75-6533 by Sec. 192, Ch. 5, L. 1971; R.C.M. 1947, 75-6533.

20-6-415. Repealed. Sec. 22, Ch. 219, L. 1997.

History: En. 75-6534 by Sec. 193, Ch. 5, L. 1971; amd. Sec. 6, Ch. 137, L. 1973; R.C.M. 1947, 75-6534.

20-6-416. No cash disposition when territory transferred. Whenever only a portion of the territory of one district is transferred to another district, all cash and debts, other than bonded indebtedness, shall be retained by the district originally realizing the cash or debt.

History: En. 75-6535 by Sec. 194, Ch. 5, L. 1971; R.C.M. 1947, 75-6535.

20-6-417. Property disposition when district boundaries changed. Whenever district boundaries are changed, title to the real and personal property of the districts involved in such boundary change shall vest in the district which encompasses the territory where such real or personal property was located at the time the legal procedure to authorize the boundary change was introduced. The disposition or utilization of such property will be in the discretion of the trustees of the district encompassing the territory of its location, as provided by law.

History: En. 75-6536 by Sec. 195, Ch. 5, L. 1971; R.C.M. 1947, 75-6536.

Cross-References

Power of trustees over property, 20-3-324, 20-6-602.

20-6-418. Surrender of records when district ceases to exist. Within 10 days after any district ceases to exist, the trustees shall surrender all minutes, documents, and other records of the district to the trustees of the district assuming its territory or, if more than one district assumes its territory, to the county superintendent.

History: En. 75-6537 by Sec. 196, Ch. 5, L. 1971; R.C.M. 1947, 75-6537.

20-6-419 and 20-6-420 reserved.

20-6-421. Conditions for district annexation. (1) An elementary district may be annexed to a contiguous elementary district under the provisions of 20-6-422 when:

(a) a third-class district where a high school is not located is annexed to a third-class district where a high school is located, to a first-class district, or to a second-class district;

(b) a third-class district where a high school is located is annexed to a first-class district or to a second-class district; or

(c) a second-class district is annexed to a first-class district.

(2) A high school district may be annexed to a contiguous high school district or a K-12 school district may be annexed to a contiguous K-12 school district under the provisions of 20-6-422 when:

(a) a third-class district is annexed to a first-class district or to a second-class district; or

(b) a second-class district is annexed to a first-class district.

History: En. Sec. 1, Ch. 510, L. 2005.

20-6-422. District annexation. (1) As used in this section, the following definitions apply:

(a) "Annexing district" means the district to which another district is being attached through an annexation procedure.

(b) "District to be annexed" means the district that is being attached to another district through an annexation procedure.

(2) A district may be annexed to a contiguous district when one of the conditions of 20-6-421 is met in accordance with the following procedure:

(a) An annexation proposition may be introduced in the district to be annexed by either of the two following methods:

(i) the trustees may pass a resolution requesting the county superintendent of the county where the district is located to order an election to consider an annexation proposition for their district; or

(ii) not less than 20% of the electors of the district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent of the county where the district is located requesting an election to consider an annexation proposition for their district.

(b) The resolution or petition must state whether the annexation is to be made with or without the joint assumption of bonded indebtedness of the annexing district by the district to be annexed and the annexing district.

(3) Before ordering an election on the proposition, the county superintendent of the county where the district to be annexed is located must first receive from the trustees of the annexing district a resolution giving the county superintendent the authority to annex the district. The resolution must state whether the annexation is to be made with or without the joint assumption of bonded indebtedness of the annexing district by the district to be annexed and the annexing district. The resolution from the annexing district and the resolution or petition from the district to be annexed must agree on whether or not there will be joint assumption of bonded indebtedness. Without agreement, the annexation proposition may not be considered further.

(4) When the county superintendent of the county where the district to be annexed is located has received the resolution authorizing the annexation from the annexing district and the resolution or valid petition from the district to be annexed, the county superintendent shall, within 10 days and as provided by 20-20-201, order the trustees of the district to be annexed to call an annexation election.

(5) The district to be annexed shall call and conduct an election in the manner prescribed in this title for school elections and subject to subsections (6) and (7). Any elector qualified to vote under the provisions of 20-20-301 may vote.

(6) (a) If the district to be annexed is to jointly assume the bonded indebtedness of the annexing district, the ballots must read, after stating the annexation proposition, "FOR annexation with assumption of bonded indebtedness" and "AGAINST annexation with assumption of bonded indebtedness".

(b) When the trustees in each district conducting an election canvass the vote under the provisions of 20-20-415, they shall determine the number of votes "FOR" and "AGAINST" the proposition.

(c) The proposition is approved in the district if a majority of those voting approve the proposition.

(7) If the district to be annexed is not to jointly assume the bonded indebtedness of the annexing district, the ballots must read, after stating the annexation proposition, "FOR annexation without assumption of bonded indebtedness" and "AGAINST annexation without assumption of bonded indebtedness". The annexation proposition is approved by a district if a majority of those voting in a district approve the proposition.

(8) After the county superintendent of the county where the district to be annexed is located has received the election certification provided for in 20-20-416 from the trustees of the district conducting the annexation election and if the annexation proposition has been approved by the election, the county superintendent shall order the annexation of the territory of the district voting on the proposition to the district that has authorized the annexation to its territory effective July 1. The order must be issued within 10 days after the receipt of the election certificate. For annexation with joint assumption of bonded indebtedness, the order must specify that there will be joint assumption of bonded indebtedness between the owners of all taxable real and personal property in the annexed territory and in the annexing district. The county superintendent of the county where the district to be annexed is located shall send a copy of the order to the board of county commissioners of each county involved in the annexation order and to the trustees of the districts involved in the annexation order.

(9) If the annexation proposition is disapproved in the district to be annexed, the annexation proposition fails and the county superintendent of the county where the district to be annexed is located shall notify each district of the disapproval of the annexation proposition.

History: En. Sec. 2, Ch. 510, L. 2005; amd. Sec. 14, Ch. 510, L. 2005.

20-6-423. District consolidation. (1) Any two or more contiguous elementary school districts may consolidate to organize an elementary district. Any two or more contiguous high school districts may be consolidated to organize a high school district. Any two or more contiguous K-12 school districts may be consolidated to organize a K-12 school district. The consolidation must be conducted as provided in this section.

(2) (a) A consolidation proposition may be introduced, individually, in each of the districts by either of the two following methods:

(i) the trustees may pass a resolution requesting the county superintendent of the county where the district is located to order an election to consider a consolidation proposition involving their district; or

(ii) not less than 20% of the electors of an individual district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent of the county where the district is located requesting an election to consider a consolidation proposition involving their district.

(b) The resolution or petition must state whether the consolidation is to be made with or without the joint assumption of the bonded indebtedness of each district by all districts included in the consolidation. The resolution or petition from each district must agree on whether or not there will be joint assumption of bonded indebtedness. Without agreement, the consolidation proposition may not be considered further.

(3) When a county superintendent has received a resolution or a valid petition from each of the districts included in the consolidation proposition, the county superintendent shall, within 10 days after the receipt of the last resolution or petition and as provided by 20-20-201, order the

trustees of each district included in the consolidation proposition to call a consolidation election to be held no later than December 31 preceding the school year in which the consolidation is to become effective. If the districts involved in the consolidation proposition are located in more than one county, the county superintendents in both counties shall jointly order the district to call a consolidation election.

(4) Each district, individually, shall call and conduct an election in the manner prescribed in this title for school elections and subject to additional requirements of subsections (5) and (6). Any elector qualified to vote under the provisions of 20-20-301 may vote.

(5) (a) If the districts to be consolidated are to jointly assume the bonded indebtedness of each district involved in the consolidation, the ballots must read, after stating the consolidation proposition, "FOR consolidation with assumption of bonded indebtedness" and "AGAINST consolidation with assumption of bonded indebtedness".

(b) When the trustees in each district conducting an election canvass the vote under the provisions of 20-20-415, they shall determine the number of votes "FOR" and "AGAINST" the proposition.

(c) The proposition is approved in the district if a majority of those voting approve the proposition.

(6) If the districts to be consolidated are not to jointly assume the bonded indebtedness of each district involved in the consolidation, the ballots must read, after stating the consolidation proposition, "FOR consolidation without assumption of bonded indebtedness" and "AGAINST consolidation without assumption of bonded indebtedness". The consolidation proposition is approved by a district if a majority of those voting in a district approve the proposition. Otherwise it is disapproved.

(7) (a) After the county superintendent of each county where a district involved in the consolidation proposition is located has received the election certification provided for in 20-20-416 from the trustees of each district included in a consolidation proposition, the appropriate county superintendent shall determine if the consolidation proposition has been approved in each district. If each district has approved the consolidation proposition, each county superintendent shall, within 10 days after the receipt of the last election certificate, order the consolidation of the districts effective July 1 of the ensuing school fiscal year. The order must:

(i) for consolidation with the joint assumption of bonded indebtedness, specify that there will be joint assumption of bonded indebtedness between the owners of all taxable real and personal property in each district forming the consolidated district;

(ii) specify the number of the consolidated district; and

(iii) establish an interim board of trustees for the consolidated district as provided in 20-6-424. The trustees shall serve until their successors are elected at the next succeeding regular school election and qualified.

(b) Each county superintendent shall send a copy of the order to the board of county commissioners of each county where a district involved in the consolidation proposition is located and to the trustees of each district incorporated in the consolidation order.

(8) If any district included in the consolidation proposition disapproves the consolidation proposition, the consolidation of all districts fails and the appropriate county superintendent shall notify each district of the disapproval of the consolidation proposition.

History: En. Sec. 3, Ch. 510, L. 2005; amd. Sec. 14, Ch. 510, L. 2005.

20-6-424. Interim governance of consolidated district. (1) Upon passage of a consolidation proposition under the provisions of 20-6-423, an interim board of trustees made up of all of the members of the boards of trustees of the districts that consolidated shall serve as the trustees for the consolidated district from the date of the consolidation order until the newly elected board of the consolidated district is organized under 20-3-321. The interim board of trustees shall elect a presiding officer from among its members.

(2) The trustees of each district incorporated in the consolidation order shall continue to perform those duties related to the operation of their individual districts until the effective date of the consolidation. The interim board of trustees shall perform those duties related to the formation of and transition to the consolidated district, including but not limited to:

(a) calling an election of the new board of trustees for the consolidated district to be held on the regular election day preceding the effective date of the consolidation; and

(b) if necessary, calling an election under 20-9-353 for the ensuing budget year of the consolidated district.

(3) At the next regular school election following the consolidation election, trustees for the consolidated district must be elected in accordance with the election provisions of Title 13 and Title 20. The term of office is 3 years, except that the initial terms of the newly elected trustees must be selected by lot in order to comply with the provisions of 20-3-302.

(4) The interim board of trustees must be dissolved upon the organization of the newly elected trustees pursuant to 20-3-321.

History: En. Sec. 4, Ch. 510, L. 2005.

Part 5

Opening and Closing of Schools

Part Cross-References

Power of trustees to open and close schools, 20-3-324(7).

20-6-501. Definition of various schools. As used in this title, unless the context clearly indicates otherwise, the term “school” means an institution for the teaching of children that is established and maintained under the laws of the state of Montana at public expense. The trustees of a district shall designate the grade assignments for the schools of the district, but for the purposes of this title each school is known as:

(1) an elementary school when it comprises the work of any combination of kindergarten, other preschool programs, or the first eight grades or their equivalents. A middle school is a school comprising the work of grades 4 through 8 or any combination of grades 4 through 8 that has been accredited as a middle school under the provisions of 20-7-102. When an accredited junior high school is operated by the district, grades 7 and 8 or their equivalents may not be considered as elementary grades.

(2) a high school when it comprises the work of one or more grades of schoolwork or their equivalents intermediate between the elementary schools and the institutions of higher education of the state of Montana. Types of high schools are designated as follows:

(a) a junior high school is a school comprising the work of grades 7 through 9 or their equivalents that has been accredited as a junior high school under the provisions of 20-7-102;

(b) a senior high school is a school that comprises the work of grades 10 through 12 or their equivalents and that is operated in conjunction with a junior high school;

(c) a 4-year high school is a school comprising the work of grades 9 through 12 or their equivalents.

History: En. 75-6601 by Sec. 199, Ch. 5, L. 1971; amd. Sec. 1, Ch. 352, L. 1974; R.C.M. 1947, 75-6601(1), (2); amd. Sec. 10, Ch. 658, L. 1987; amd. Sec. 18, Ch. 219, L. 1997; amd. Sec. 4, Ch. 343, L. 1999.

20-6-502. Opening or reopening of elementary school. The trustees of any elementary district may open or reopen an elementary school of the district when the opening or reopening has been approved in accordance with the following procedure:

(1) The parents of at least two pupils who would attend the opened or reopened school petition the trustees of the district to open or reopen a school. The petition must identify the school, state the reasons for requesting the opening or reopening, and give the names of the children who would attend the school.

(2) If the trustees approve the opening or reopening of a school, they shall send the petition with a copy of their approval resolution to the county superintendent. The county superintendent shall review the petition to determine if the average number belonging (ANB) of the school would be two or more. If the trustees plan to open or reopen the school during the current school fiscal year, the trustees shall include the proposed opening date in the approval resolution and shall request that the process outlined in this section be expedited.

(3) The county superintendent shall present the petition, the trustees’ approval, and the county superintendent’s findings on the probable ANB to the board of county commissioners for their consideration. The board shall deny the opening or reopening of any school if the county superintendent’s enrollment estimate for the school is less than two ANB. In all other cases, the board may approve or disapprove the requested opening or reopening of the elementary school.

(4) (a) If the board approves a school opening or reopening, the county superintendent shall send a copy of the approval, along with the petition, the trustees' approval, and the county superintendent's estimate of the probable ANB, to the superintendent of public instruction. Except under the circumstances described in subsection (4)(b), the trustees shall apply to the superintendent of public instruction for approval to open or reopen the school by June 1 prior to the beginning of the school year in which they intend to open or reopen the elementary school. The superintendent of public instruction shall approve or disapprove the requested opening or reopening of the elementary school by the fourth Monday of June. If the opening or reopening is approved, the superintendent of public instruction shall approve or adjust the ANB estimate of the county superintendent for the school and the ANB amount must be used for budgeting and BASE funding program purposes during the ensuing school fiscal year. An ANB amount may not be approved for the ensuing school fiscal year for an opening or reopening school when the request for the school has not been received by the superintendent of public instruction by June 1.

(b) (i) If the opening or reopening is approved and the trustees want to open or reopen the school during the current school fiscal year, the trustees shall submit a budget request to the superintendent of public instruction for that portion of the fiscal year in which the school will be in operation prior to the ensuing school fiscal year. The superintendent of public instruction shall approve or adjust the budget request and shall fund the budget for the portion of the school year in which the school will be in operation.

(ii) Before a school may open or reopen during the current school fiscal year, the school must be classified as an isolated school in accordance with the provisions of 20-9-302, except that the dates in that section for the submission and approval of the application for classification do not apply and the application must be made at the same time that the application for opening or reopening the school is made.

History: En. 75-6602 by Sec. 200, Ch. 5, L. 1971; R.C.M. 1947, 75-6602; amd. Sec. 1, Ch. 105, L. 2001; amd. Sec. 21, Ch. 237, L. 2001.

Cross-References

ANB defined, 20-1-101.

Calculation of average number belonging, 20-9-311.

Circumstances under which regular average number belonging may be increased, 20-9-313.

20-6-503. Opening or reopening of a high school. (1) The trustees of any high school district may open or reopen a high school of the district or a branch of a high school of the district when such opening or reopening has been approved by the superintendent of public instruction; except when a county high school is discontinued by a unification action, the trustees may establish, by resolution, a high school to be operated by the high school district without further action or approval. When the trustees of a high school district resolve to open or reopen a high school, they shall apply to the superintendent of public instruction for approval to open or reopen such school by June 1 before the school fiscal year in which they intend to open or reopen the high school. Such application shall state:

- (a) their reasons why the high school should be opened or reopened;
- (b) the probable enrollment of such high school;
- (c) the distance and road conditions of the route to neighboring high schools;
- (d) the taxable value of the district;
- (e) the building and equipment facilities available for such high school;
- (f) the planned course of instruction for such high school;
- (g) the planned methods of complying with high school standards of accreditation; and
- (h) any other information that may be required by the superintendent of public instruction.

(2) The superintendent of public instruction shall investigate the application for the opening or reopening of a high school and shall approve or disapprove the opening of the high school before the fourth Monday of June preceding the first year of intended operation. If the opening is approved, the high school district trustees may open such high school.

(3) Whenever the opening or reopening of a high school is approved for the ensuing school fiscal year, the county superintendent shall estimate the average number belonging (ANB) after investigating the probable enrollment for the high school. The ANB determined by the county superintendent shall be used for budgeting and BASE funding program purposes.

(4) Nothing herein contained shall be construed so as to preclude the trustees of a high school district from establishing more than one high school in the district.

History: En. 75-6603 by Sec. 201, Ch. 5, L. 1971; R.C.M. 1947, 75-6603.

Cross-References

ANB defined, 20-1-101.

School fiscal year, 20-1-301.

Calculation of average number belonging, 20-9-311.

Circumstances under which regular average number belonging may be increased, 20-9-313.

20-6-504. Opening of a junior high school. (1) The trustees of any elementary district and the trustees of the high school district in which such elementary district is located may open a junior high school when such opening has been approved by the superintendent of public instruction; except that when the high school district operates a county high school, the opening of a junior high school shall be approved under the provisions of 20-6-505.

(2) When the trustees of such districts resolve to open a junior high school, they shall jointly apply to the superintendent of public instruction for approval to open such school by June 1 before the school fiscal year in which they intend to open the junior high school. The application shall contain such information as is required under 20-6-503 for an application to open a high school.

(3) The superintendent of public instruction shall investigate the application for the opening of a junior high school and shall approve or disapprove the opening of the junior high school before the fourth Monday of June preceding the first year of intended operation. If the opening is approved, the trustees of the elementary district and the high school district may jointly open such school.

(4) Whenever the opening of a junior high school is approved for the ensuing school fiscal year, the county superintendent shall estimate the average number belonging (ANB) after investigating the probable enrollment for the junior high school. The ANB determined by the county superintendent shall be used for budgeting and BASE funding program purposes during the ensuing school fiscal year.

History: En. 75-6604 by Sec. 202, Ch. 5, L. 1971; R.C.M. 1947, 75-6604.

Cross-References

ANB defined, 20-1-101.

Calculation of average number belonging, 20-9-311.

Circumstances under which regular average number belonging may be increased, 20-9-313.

20-6-505. Opening a junior high school when high school district operates a county high school. (1) Whenever the trustees of an elementary district and a high school district operating a county high school have formed a joint board of trustees under the provisions of 20-3-361, such joint board of trustees may open a junior high school under the provisions of this section.

(2) When the joint board of trustees resolves to open a junior high school, they shall order an election under the provisions of 20-20-201 to submit a proposition to the electors of the district to approve or disapprove the trustees' resolution to open a junior high school. The joint board of trustees shall call and conduct the election in the manner prescribed in this title for school elections and equally share the cost of the election. Any elector qualified to vote under the provisions of 20-20-301 may vote on the proposition. If a majority of the electors voting at the election approve the proposition, the trustees shall apply to the superintendent of public instruction for approval to open a junior high school. If a majority of the electors voting at the election disapprove the proposition, a junior high school shall not be opened by the joint board of trustees.

(3) The application to the superintendent of public instruction for the approval to open a junior high school shall be submitted by June 1 following the election approving the opening of the junior high school. The application shall contain such information as is required under 20-6-503 for an application to open a high school.

(4) The superintendent of public instruction shall investigate the application for the opening of a junior high school and shall approve or disapprove the opening of the junior high school before the fourth Monday of June preceding the first year of intended operation. If the opening is approved, the joint board of trustees may open the junior high school.

(5) At any time the trustees of the elementary district and the trustees of the high school district shall cease to form a joint board of trustees under the provisions of 20-3-361, the junior high school shall be closed and the districts shall assume the provision of an educational program for the junior high school pupils of their respective districts.

History: En. 75-6605 by Sec. 203, Ch. 5, L. 1971; R.C.M. 1947, 75-6605.

Cross-References

Powers of joint board of trustees, 20-3-362.

Circumstances under which regular average number belonging may be increased, 20-9-313.

School elections, Title 20, ch. 20.

20-6-506. Budgeting and cost sharing when junior high school operated by elementary district and high school district operating county high school. (1) Whenever the opening of a junior high school is approved for the ensuing school fiscal year under 20-6-505, the county superintendent shall estimate the average number belonging (ANB) after investigating the probable enrollment for the junior high school. The ANB determined by the county superintendent and the ANB actually realized in subsequent school fiscal years must be applied to prorate the BASE funding program amount between the elementary and high school districts. Each district shall adopt its general fund budget on the basis of the prorated amount and shall finance its proportionate share of the cost of operating the junior high school.

(2) The cost of operating the junior high school must be prorated between the elementary district and the high school district on the basis of the ratio that the number of pupils of their district is to the total enrollment of the junior high school.

History: En. 75-6606 by Sec. 204, Ch. 5, L. 1971; amd. Sec. 13, Ch. 266, L. 1977; R.C.M. 1947, 75-6606; amd. Sec. 14, Ch. 11, Sp. L. June 1989; amd. Sec. 8, Ch. 633, L. 1993.

Cross-References

ANB defined, 20-1-101.

Powers of joint board of trustees, 20-3-362.

Calculation of average number belonging, 20-9-311.

20-6-507. Opening of middle school. The trustees of any elementary district may open a middle school when such opening has been approved by the superintendent of public instruction. The state superintendent shall investigate an application for the opening of a middle school and shall approve or disapprove the opening before the fourth Monday in June preceding the first year of intended operation. When a middle school opening is approved, the county superintendent shall estimate the ANB after investigating the probable enrollment for the middle school. The ANB so estimated shall be used for budgeting and BASE funding program purposes during the ensuing school fiscal year.

History: En. 75-6609 by Sec. 2, Ch. 352, L. 1974; R.C.M. 1947, 75-6609.

Cross-References

ANB defined, 20-1-101.

Calculation of average number belonging, 20-9-311.

20-6-508. Kindergarten through grade twelve system. Unless otherwise required by law, the trustees of an elementary district in which a high school is located and the trustees of the high school district operating such high school may organize the schools of their districts to form a kindergarten through grade 12 school system, provided that the high school and elementary trustees shall not assume responsibility for the administration of grades which are not properly within their jurisdiction.

History: En. 75-6601 by Sec. 199, Ch. 5, L. 1971; amd. Sec. 1, Ch. 352, L. 1974; R.C.M. 1947, 75-6601(3).

20-6-509. School closure. Whenever it is in the best interest of the pupils affected, the trustees of any district may close any school of the district, except that a junior high school may be closed only by joint action of the trustees of the elementary district and the high school district in which the school is located. Whenever the trustees of a district close a school of the district, they shall provide the pupils of the closed school with transportation and tuition, if required, to other schools in accordance with the provisions of this title.

History: En. 75-6607 by Sec. 205, Ch. 5, L. 1971; R.C.M. 1947, 75-6607; amd. Sec. 3, Ch. 384, L. 1979.

Cross-References

Powers of joint board of trustees, 20-3-362.

Nonoperating fund, 20-9-505, 20-9-506.

Part 6 School Property

Part Cross-References

Proscribed acts relating to contracts and claims, Title 2, ch. 2, part 2.
Sale of county property to school district, 7-8-2216.
Use of district property by home guard, 10-1-703.
School officers not to act as agents, 20-1-201.
Conflict of interest, 20-1-205.
Liability of parents for pupil's damage to property, 20-5-201, 40-6-237, 40-6-238.
Authority of Board of Public Education when school property used, 20-7-804.
Conflicts of interests, letting contracts, and calling for bids, 20-9-204.
Trustees to execute all contracts, 20-9-213.
Additional levy for furnishing school facilities, 20-9-353.
Nonoperating fund for maintenance of district property, 20-9-505.
Public school fund and grants to schools, Title 20, ch. 9, part 6.

20-6-601. Power to accept gifts. All school districts are hereby granted the power and authority to accept, receive, take, hold, and possess any gift, donation, grant, devise, or bequest of property, real or personal, and the right to own, hold, work, and improve the same.

History: En. Sec. 1, Ch. 47, L. 1927; re-en. Sec. 5668.17, R.C.M. 1935; R.C.M. 1947, 11-1006(part).

Cross-References

Authority to request, accept, and disburse money, 20-3-208.
Acceptance and expenditure of federal money for state, 20-9-603.
Gifts, legacies, devises, and administration of endowment fund, 20-9-604.

20-6-602. Trustees' power over property. The trustees of any district other than a high school district operating a county high school shall have the power and the responsibility to hold in trust all real and personal property of the district for the benefit of the schools and children of the district. In the name of the county, the trustees of a high school district operating a county high school, as defined by 20-6-101, shall have the power and the responsibility to hold in trust all real and personal property of the district for the benefit of the schools and children of the district.

History: En. 75-8201 by Sec. 473, Ch. 5, L. 1971; R.C.M. 1947, 75-8201.

20-6-603. Trustees' authority to acquire or dispose of sites and buildings — when election required. (1) The trustees of a district may purchase, build, exchange, or otherwise acquire, sell, or dispose of sites and buildings of the district. Action may not be taken by the trustees without the approval of the qualified electors of the district at an election called for the purpose of approval unless:

(a) a bond issue has been authorized for the purpose of constructing, purchasing, or acquiring the site or building;

(b) an additional levy under the provisions of 20-9-353 has been approved for the purpose of constructing, purchasing, or acquiring the site or building;

(c) the cost of constructing, purchasing, or acquiring the site or building is financed without exceeding the maximum general fund budget amount for the district and, in the case of a site purchase, the site has been approved under the provisions of 20-6-621; or

(d) money is otherwise available under the provisions of this title and the ballot for the site approval for the building incorporated a description of the building to be located on the site.

(2) Except for land that is granted to or held by the state in trust or land acquired by conditional deed under the provisions of 20-6-605, the trustees may, upon approval by the electorate, accept as partial or total consideration for the exchange of the land a binding written agreement by a public or private entity seeking the exchange to use the property to provide a service that benefits the school district. The deed for the exchange of land must contain reversionary clauses that allow for the return of the land to school district ownership if the binding written agreement is not complied with.

(3) When an election is conducted under the provisions of this section, it must be called under the provisions of 20-20-201 and must be conducted in the manner prescribed by this title for school elections. An elector qualified to vote under the provisions of 20-20-301 may vote in the election. If a majority of those electors voting at the election approve the proposed action, the trustees may take the proposed action.

History: En. 75-8204 by Sec. 476, Ch. 5, L. 1971; R.C.M. 1947, 75-8204; amd. Sec. 15, Ch. 11, Sp. L. June 1989; amd. Sec. 9, Ch. 633, L. 1993; amd. Sec. 1, Ch. 276, L. 2001.

Cross-References

Mail ballot elections prohibited, 13-19-104.
 Bond issues for certain purposes, 20-9-403.
 Purpose and authorization of a building reserve fund by election, 20-9-502.
 Budgeting, tax levy, and use of building reserve fund, 20-9-503.
 Building fund to be credited when property sold, 20-9-508.
 Lease or sale of district property, 20-15-107.
 School elections, Title 20, ch. 20.

20-6-604. Sale of property when resolution passed after hearing — appeal procedure. (1) Whenever the trustees of a district determine that a site, building, or any other real or personal property of the district is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of the district, the trustees may sell or otherwise dispose of the real or personal property in accordance with this section and without conforming to the provisions of 20-6-603. If a decision to sell or dispose of property is made, the trustees shall adopt a resolution to sell or otherwise dispose of the district real or personal property because it is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of the district.

(2) The resolution may not become effective for 14 days after the notice required in subsection (3) is made.

(3) The trustees shall provide notice of the resolution in the manner required for school elections in 20-20-204.

(4) A taxpayer may appeal the resolution of the trustees, at any time prior to the effective date of the resolution, to the district court by filing a verified petition with the clerk of the court and serving a copy of the petition upon the district. The petition must set out in detail the objections of the petitioner to the adoption of the resolution or to the disposal of the property. The service and filing of the petition stay the resolution until final determination of the matter by the court. The court shall immediately fix the time for a hearing at the earliest convenient time. At the hearing, the court shall hear the matter de novo and may take testimony as it considers necessary. Its proceedings are summary and informal, and its decision is final.

(5) The trustees of a district that has adopted a resolution to sell or otherwise dispose of district real or personal property and, if appealed, has been upheld by the court shall sell or dispose of the real or personal property in any reasonable manner that they determine to be in the best interests of the district.

(6) The money realized from the sale or disposal of real or personal property of the district must be credited to the debt service fund, building fund, general fund, or other appropriate fund, at the discretion of the trustees.

History: En. 75-8205 by Sec. 477, Ch. 5, L. 1971; amd. Sec. 8, Ch. 91, L. 1973; R.C.M. 1947, 75-8205; amd. Sec. 1, Ch. 150, L. 1987; amd. Sec. 3, Ch. 568, L. 1991; amd. Sec. 1, Ch. 144, L. 1997.

Cross-References

Separate debt service fund maintained by County Treasurer, 20-9-440.
 Building fund to be credited when property sold, 20-9-508.
 School election notice, 20-20-204.

20-6-605. Land acquired by conditional deed or at will or sufferance. Whenever, after March 17, 1939, the trustees acquire land by deed conditioned upon the use of the land for the conduct of school or related activities or whenever land has been used by the trustees at the will or sufferance of the land's owner or claimant and the district has constructed buildings or made other improvements on the land, the owner or claimant may repossess the land if it ceases to be used as specified by deed or, if not specified, for the conduct of school or related activities. However, the owner or claimant shall first notify the trustees in writing of his intent to repossess the land, and the trustees shall thereafter have 1 year to remove any buildings or improvements placed there by the district. The trustees' failure to remove the buildings or improvements within that time shall constitute a forfeiture of such buildings or improvements. Before the owner or claimant shall have the right to give notice of repossession, the district's intention to permanently cease using the land shall have been established by resolution of the trustees and vote of the district's electors.

History: En. 75-8202 by Sec. 474, Ch. 5, L. 1971; R.C.M. 1947, 75-8202.

Cross-References

Right of reentry, Title 70, ch. 16, part 4.

20-6-606. Letting contracts for school facilities. Any letting of contracts related to the construction or furnishing of a new, enlarged, remodeled, or repaired building must be conducted under the provisions of 20-9-204 or Title 18, chapter 2, part 5.

History: En. 75-8210 by Sec. 482, Ch. 5, L. 1971; R.C.M. 1947, 75-8210; amd. Sec. 9, Ch. 574, L. 2005.

Cross-References

Power of trustees to execute contracts, 20-9-213.

20-6-607. Leasing district property and disposition of any rentals. The trustees of a district may rent or lease any buildings, land, facilities, or personal property of the district under the terms specified by the trustees. Any money collected for the rental or lease may, in the discretion of the trustees, be used for any proper school purpose and deposited in any fund as the trustees consider appropriate.

History: En. 75-8211 by Sec. 483, Ch. 5, L. 1971; amd. Sec. 2, Ch. 88, L. 1973; amd. Sec. 3, Ch. 424, L. 1977; R.C.M. 1947, 75-8211; amd. Sec. 2, Ch. 462, L. 2005.

Cross-References

Apportionment of rents from school lands, Art. X, sec. 5, Mont. Const.

Lease or rental agreement fund, 20-9-509.

Oil and gas leases, 82-10-201 through 82-10-204.

20-6-608. Authority and duty of trustees to insure district property. (1) The trustees of a district shall insure all real and personal property of the district. The trustees shall include the cost of insurance in the general fund budget of the district.

(2) Proceeds received from an insurance settlement on real or personal property insured by the district may, at the discretion of the trustees, be deposited in a fund considered appropriate by the trustees.

History: En. 75-8212 by Sec. 484, Ch. 5, L. 1971; R.C.M. 1947, 75-8212; amd. Sec. 16, Ch. 11, Sp. L. June 1989; amd. Sec. 5, Ch. 343, L. 1999.

Cross-References

School district may not levy tax, 2-9-212.

20-6-609. Trustees' authority to acquire property by lease-purchase agreement. The trustees of a district may acquire real and personal property by an agreement to lease for 3 years with an option to purchase. The terms of the lease must comply with 20-6-625. If real property is acquired, the trustees shall comply with 20-6-603.

History: En. Sec. 1, Ch. 144, L. 1985; amd. Sec. 11, Ch. 22, L. 1997.

Cross-References

Montana Procurement Act — local government adoption of provisions, 18-4-124.

Conflicts of interests, letting contracts, and calling for bids, 20-9-204.

Duties of trustees — contracts, 20-9-213.

20-6-610 through 20-6-620 reserved.

20-6-621. Selection of school sites — approval election. (1) (a) Except as provided in subsection (1)(b), the trustees of a district may select the sites for school buildings or for other school purposes, but the selection must first be approved by the qualified electors of the district before a contract for the purchase of a site is entered into by the trustees.

(b) The trustees may purchase or otherwise acquire property contiguous to an existing site that is in use for school purposes without a site approval election. The trustees may take an option on a site prior to the site approval election.

(2) The election for the approval of a site must be called under the provisions of 20-20-201 and must be conducted in the manner prescribed by this title for school elections. An elector who may vote at a school site election is qualified to vote under the provisions of 20-20-301. If a majority of those voting at the election approve the site selection, the trustees may purchase the site. A site approval election is not required when the site was specifically identified in an election at which an additional levy or the issuance of bonds was approved for the purchase of the site.

(3) Any site for a school building or other building of the district that is selected or purchased by the trustees must:

(a) be in a place that is convenient, accessible, and suitable;

(b) comply with the minimum size and other requirements prescribed by the department of public health and human services; and

(c) comply with the statewide building regulations, if any, promulgated by the department of labor and industry.

History: En. 75-8203 by Sec. 475, Ch. 5, L. 1971; R.C.M. 1947, 75-8203; amd. Sec. 75, Ch. 575, L. 1981; amd. Sec. 1, Ch. 352, L. 1985; amd. Sec. 48, Ch. 418, L. 1995; amd. Sec. 67, Ch. 546, L. 1995; amd. Sec. 1, Ch. 79, L. 1997; amd. Sec. 1, Ch. 18, L. 1999; amd. Sec. 50, Ch. 483, L. 2001.

Cross-References

Mail ballot elections prohibited, 13-19-104.

Building construction standards, Title 50, ch. 60.

Board of Land Commissioners, Title 77, ch. 1, part 2.

20-6-622. Review and approval of school building plans and specifications. (1) A school building, either publicly or privately owned or operated, in which students are housed or instructed may not be built, enlarged, or remodeled until the plans and specifications for construction have been submitted to and approved by the department of labor and industry or a municipality or county with a building code adopted as provided in 50-60-301.

(2) The plans and specifications required in subsection (1) must show in detail the proposed construction of the building and must illustrate and indicate conformity with the applicable building code.

(3) As a service to districts, the superintendent of public instruction may review the plans and specifications required in subsection (1) to assist the districts in designing facilities for optimum utilization.

History: En. 75-8206 by Sec. 478, Ch. 5, L. 1971; amd. Sec. 11, Ch. 504, L. 1977; R.C.M. 1947, 75-8206; amd. Sec. 1, Ch. 274, L. 1983; amd. Sec. 2, Ch. 352, L. 1985; amd. Sec. 51, Ch. 483, L. 2001.

Cross-References

Building construction standards, Title 50, ch. 60.

20-6-623. Repealed. Sec. 15, Ch. 384, L. 1979.

History: En. Sec. 1, Ch. 49, L. 1973; R.C.M. 1947, 75-8206.1.

20-6-624. School building plans and specifications approval before payment. (1) The trustees of a district may not make any payment under a contract for the construction of school facilities until the plans and specifications for the construction have been approved under the provisions of 20-6-622.

(2) A contractor, architect, trustee, or any other person, firm, or corporation who violates the provisions of 20-6-622, this section, or any regulation promulgated by the department of public health and human services or the department of justice is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than \$100 or more than \$500.

History: En. 75-8208 by Sec. 480, Ch. 5, L. 1971; R.C.M. 1947, 75-8208; amd. Sec. 1, Ch. 706, L. 1991; amd. Sec. 49, Ch. 418, L. 1995; amd. Sec. 68, Ch. 546, L. 1995.

Cross-References

Lapse of budgeted appropriations and provision for unpaid claims, 20-9-209.

Fire safety in public buildings, Title 50, ch. 61.

20-6-625. Authorization to lease buildings or land for school purposes. The trustees of any district may lease buildings or land suitable for school purposes when it is within the best interests of the district to lease such building or land from the county, municipality, another district, or any person. The lease may be for a term of not more than 3 years unless prior approval of the qualified electors of the district is obtained in the manner prescribed by law for school elections, in which case the lease may be for a term of not more than 99 years. Whenever the lease is for a period of time that is longer than the current school fiscal year, the lease requirements for the succeeding school fiscal years shall be an obligation of the final budgets for such years.

History: En. 75-8209 by Sec. 481, Ch. 5, L. 1971; amd. Sec. 2, Ch. 424, L. 1977; R.C.M. 1947, 75-8209.

Cross-References

School fiscal year, 20-1-301.

School elections, Title 20, ch. 20.

20-6-626 through 20-6-630 reserved.

20-6-631. When contracts for architectural services required. Whenever the trustees of a school district determine that the building, furnishing, repairing, or other work for

the benefit of a school district exceeds \$150,000 and requires architectural services under Title 37, chapter 65, the trustees of the school district shall contract for those services.

History: En. 75-6815 by Sec. 1, Ch. 370, L. 1975; R.C.M. 1947, 75-6815; amd. Sec. 1, Ch. 153, L. 1997.

Cross-References

Architects on public buildings to be certified, 18-2-113.

Seal and signature of architect on plans, 18-2-114.

20-6-632. Repealed. Sec. 1, Ch. 422, L. 1979.

History: En. 75-6816 by Sec. 2, Ch. 370, L. 1975; R.C.M. 1947, 75-6816.

20-6-633. Hiring for architectural services authorized. If the trustees determine pursuant to 20-6-631 that architectural services are necessary, the trustees shall hire a licensed architect for the architectural services as described by the school district's scope of the work. In the event that the trustees and the architect are unable to negotiate a fair and reasonable fee, the trustees may select another architect if the trustees again give reasonable notice of their selection.

History: En. 75-6817 by Sec. 3, Ch. 370, L. 1975; R.C.M. 1947, 75-6817; amd. Sec. 2, Ch. 153, L. 1997.

20-6-634. Tentative and final proposals — public meetings. Following the awarding of the contract, the trustees shall meet as often as necessary with the architectural firm to review the firm's plans and proposals. At least two of these meetings, one to review the firm's preliminary plans and one to review the firm's final proposals, shall be public meetings held after the trustees have given reasonable public notice. At these meetings the trustees shall consider any questions and testimony from the public.

History: En. 75-6818 by Sec. 4, Ch. 370, L. 1975; R.C.M. 1947, 75-6818.

Cross-References

Open meetings, Title 2, ch. 3, part 2.

Meetings and quorum, 20-3-322.

20-6-635. Contracts with Montana firms encouraged. The trustees are encouraged but not required to award architectural contracts to firms based or operating in Montana.

History: En. 75-6819 by Sec. 5, Ch. 370, L. 1975; R.C.M. 1947, 75-6819.

20-6-636. Prohibition against contingent fees — penalty. (1) Each contract entered into by a school district for architectural services shall contain a prohibition against contingent fees as follows: "The architectural firm warrants that it has not employed or retained any company or person, other than a bona fide full-time employee, to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide full-time employee, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement." Upon the breach or violation of this prohibition, the trustees shall have the right to terminate the agreement without liability and, at their discretion, to deduct from the contract price or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

(2) Any individual, corporation, partnership, firm, or company, other than a bona fide full-time employee, is prohibited from offering, agreeing, or contracting to solicit or secure school district contracts for architectural services for any other individual, company, corporation, partnership, or firm.

(3) A public official or employee is prohibited from soliciting or securing, whether for consideration or not, a contract for professional services for another.

(4) A person convicted of violating subsection (1), (2), or (3) of this section shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 75-6820 by Sec. 6, Ch. 370, L. 1975; R.C.M. 1947, 75-6820.

Cross-References

Proscribed acts related to contracts and claims, Title 2, ch. 2, part 2.

Conflicts of interests, letting contracts, and calling for bids, 20-9-204.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

20-6-637 through 20-6-639 reserved.

20-6-640. Long-term loans. School districts that experience a disaster that destroys school property to the extent of rendering the property unfit for its present school use may apply

for long-term loans for use in replacing school property under the provisions of Title 17, chapter 5, part 16.

History: En. Sec. 1, Ch. 585, L. 1991.

Cross-References

Municipal Finance Consolidation Act, Title 17, ch. 5, part 16.

Part 7

K-12 School Districts

20-6-701. K-12 school districts required — definition — procedure for creation — exception. (1) Except as provided in subsection (4), each elementary district with the same district boundaries as a high school district shall attach to the high school district for the purpose of establishing a K-12 school district.

(2) For the purposes of this title, unless the context clearly indicates otherwise, “K-12 school district” means a high school district with an elementary district that has been attached to the high school district under the procedures provided in this section, with the high school district remaining an organized district under the provisions of 20-6-101 and other provisions of law and the elementary district becoming an inactive district under the provisions of 20-6-101.

(3) The attachment of an elementary district to a high school district to form a K-12 school district must be conducted under the following procedure:

(a) The trustees of each district shall pass a resolution requesting the county superintendent to order an attachment involving their districts.

(b) When the county superintendent receives a resolution from each of the districts, the county superintendent shall, within 10 days after receipt of the last resolution, order the attachment of the elementary district to the high school district to take effect on July 1 of the ensuing school fiscal year. Within 30 days of the order, the county superintendent shall send a copy of the order to the board of county commissioners, the trustees of the districts included in the attachment order, and the superintendent of public instruction.

(4) This section does not apply to a school district receiving federal impact aid funding, as provided in 20 U.S.C. 7701, et seq., if creation or continuation of a K-12 district has resulted in or will result in the loss of federal impact aid funding.

History: En. Sec. 1, Ch. 555, L. 1991; amd. Sec. 1, Ch. 194, L. 1993; amd. Sec. 12, Ch. 22, L. 1997; amd. Sec. 1, Ch. 95, L. 1997.

20-6-702. Funding for K-12 school districts. (1) Notwithstanding the provisions of subsections (2) through (6), a K-12 school district formed under the provisions of 20-6-701 is subject to the provisions of law for high school districts.

(2) The number of elected trustees of the K-12 school district must be based on the classification of the attached elementary district under the provisions of 20-3-341 and 20-3-351.

(3) Calculations for the following must be made separately for the elementary school program and the high school program of a K-12 school district:

(a) the calculation of ANB for purposes of determining the total per-ANB entitlements must be in accordance with the provisions of 20-9-311;

(b) the basic county tax for elementary equalization and revenue for the elementary BASE funding program for the district must be determined in accordance with the provisions of 20-9-331, and the basic county tax for high school equalization and revenue for the high school BASE funding program for the district must be determined in accordance with 20-9-333; and

(c) the guaranteed tax base aid for BASE funding program purposes for a K-12 school district must be calculated separately, using each district’s guaranteed tax base ratio, as defined in 20-9-366. The BASE budget levy to be levied for the K-12 school district must be prorated based on the ratio of the BASE funding program amounts for elementary school programs to the BASE funding program amounts for high school programs.

(4) The retirement obligation and eligibility for retirement guaranteed tax base aid for a K-12 school district must be calculated and funded as a high school district retirement obligation under the provisions of 20-9-501.

(5) For the purposes of budgeting for a K-12 school district, the trustees shall adopt a single fund for any of the budgeted or nonbudgeted funds described in 20-9-201 for the costs of operating all grades and programs of the district.

(6) Tuition for attendance in the K-12 school district must be determined separately for high school pupils and for elementary pupils under the provisions of 20-5-320 through 20-5-324, except that the actual expenditures used for calculations in 20-5-323 must be based on an amount prorated between the elementary and high school programs in the appropriate funds of each district in the year prior to the attachment of the districts.

History: En. Sec. 2, Ch. 555, L. 1991; amd. Sec. 9, Ch. 563, L. 1993; amd. Sec. 10, Ch. 633, L. 1993; amd. Sec. 13, Ch. 22, L. 1997.

20-6-703. Transitions after formation of K-12 school district. (1) When an attachment order for a K-12 school district becomes effective on July 1 under the provisions of 20-6-701:

(a) the county superintendent shall order the trustees to execute all necessary and appropriate deeds, bills of sale, or other instruments for the conveyance of title to all real and personal property of the elementary district to the high school district;

(b) the trustees of the elementary district shall entrust the minutes of the board of trustees, the elementary district documents, and other records to the high school district to which it is attached; and

(c) the county treasurer shall transfer all end-of-the-year warrants and fund balances of the attached elementary district to the similar funds established for the K-12 school district in the high school district.

(2) All taxes levied by and revenue due from a previous school fiscal year to an elementary district attached to a high school district must be payable to the appropriate fund of the high school district.

(3) The previous year's general fund budget amounts for the elementary district and the high school district that form a K-12 school district must be combined to determine the budget limitation for the ensuing school fiscal year pursuant to 20-9-308.

History: En. Sec. 3, Ch. 555, L. 1991; amd. Sec. 49, Ch. 633, L. 1993; amd. Sec. 3, Ch. 36, Sp. L. November 1993; amd. Sec. 4, Ch. 403, L. 1997.

20-6-704. Dissolution of K-12 school district. (1) Except as provided in subsection (2), in order to dissolve a K-12 district under the provisions of this section, the trustees of a district shall submit for approval to the electors of the K-12 district a proposition dissolving the K-12 district for the purpose of annexing or consolidating the K-12 district's elementary or high school program with a contiguous school district or districts in an ensuing school fiscal year under the provisions of 20-6-422 or 20-6-423.

(2) If the trustees of the school district determine that the creation or continuation of the K-12 district has resulted in or will result in the loss of federal funding for the elementary or high school programs and that it is in the best interest of the district to dissolve into the original elementary district and high school district that existed prior to the formation of the K-12 district, the trustees may dissolve the district under the following procedure:

(a) The trustees of the district shall pass a resolution requesting the county superintendent to order a dissolution of the district.

(b) When the county superintendent receives the resolution from the district, the county superintendent shall, within 10 days, order the dissolution of the K-12 district into the original elementary district and high school district, to take effect on July 1 of the ensuing school fiscal year. Within 30 days of the order, the county superintendent shall send a copy of the order to the board of county commissioners, the trustees of the district, and the superintendent of public instruction.

(3) If the entire territory of the dissolving K-12 district will be annexed to or consolidated with a contiguous district or districts, the resolution or petition required in subsection (1) or (2) must contain a description of the manner in which the real and personal property and funds of the district are to be apportioned in the dissolution of the district and the subsequent annexation to or consolidation with one or more other districts. If a portion of the dissolving K-12 district will not be annexed or consolidated with another district or districts, the resolution or petition must contain a description of the manner in which the property, funds, and financial obligations, including bonded indebtedness, of the K-12 district are to be apportioned to the district or districts whose territory is not annexed to or consolidated with another district.

(4) After the county superintendent receives the certificate of election provided for in 20-20-416 from the trustees of the K-12 district and from each district included in a consolidation proposition, the county superintendent shall determine whether the dissolution and annexation or consolidation proposition or propositions have been approved. If the K-12 district has approved the dissolution proposition and each district involved in a consolidation has approved the consolidation proposition, the county superintendent shall, within 10 days after the receipt of the election certificate, order the dissolution of the K-12 district into the original elementary district and high school district, to take effect on July 1 of the ensuing school fiscal year. Within 30 days of the order, the county superintendent shall send a copy of the dissolution order to the board of county commissioners, the trustees of the district included in the dissolution order, and the superintendent of public instruction.

(5) Whenever a K-12 district is dissolved, the following provisions apply:

(a) The trustees of the elementary district whose territory is not annexed or consolidated upon dissolution of the K-12 district are responsible for the execution of remaining financial obligations of the K-12 district and for the apportionment between the elementary and high school programs of any obligations not identified in the resolution required under subsection (3).

(b) The provisions of 20-6-410 apply for tenure teachers in the dissolution of a K-12 district.

(c) For purposes of applying the budget limitation provisions of 20-9-308, the budget of a K-12 district during its last year of operations as a K-12 district will be prorated based on rules promulgated by the superintendent of public instruction.

History: En. Sec. 1, Ch. 285, L. 1995; amd. Sec. 2, Ch. 95, L. 1997; amd. Sec. 10, Ch. 510, L. 2005.

20-6-705 through 20-6-710 reserved.

20-6-711. Tenure protected — hiring preference for noncertified employees. (1)

Whenever an elementary district is attached to a high school district to form a K-12 school district under the provisions of 20-6-701, a district superintendent, principal, teacher, or other certified employee of the elementary district who has a right of tenure under Montana law continues to have tenure in the K-12 district and the board of trustees of the high school district in which the person will perform duties shall recognize and give effect to the right of tenure.

(2) A noncertified, nonprobationary employee of an elementary district that is attached to a high school district to form a K-12 district must be given preference in hiring for any position with the K-12 district for which the employee has substantially equal qualifications and, upon acceptance of a position, may not be given probationary status.

History: En. Sec. 12, Ch. 555, L. 1991.

20-6-712. Repealed. Sec. 2, Ch. 194, L. 1993.

History: En. Sec. 5, Ch. 555, L. 1991.

CHAPTER 7 SCHOOL INSTRUCTION AND SPECIAL PROGRAMS

Part 1 — Accreditation and Curriculum

20-7-101. Standards of accreditation.

20-7-102. Accreditation of schools.

20-7-103 through 20-7-110 reserved.

20-7-111. Instruction in public schools.

20-7-112. Sectarian publications prohibited and prayer permitted.

20-7-113. Maintenance of curriculum guide file and publishing curriculum guides by superintendent of public instruction.

20-7-114. Instructional assistance by superintendent of public instruction.

20-7-115. Private music instruction.

20-7-116. Supervised correspondence study.

20-7-117. Kindergarten and preschool programs.

20-7-118. Offsite provision of educational services by school district.

20-7-119 through 20-7-130 reserved.

20-7-131. Equivalency of completion of secondary education.

20-7-132. Firearms safety education.

20-7-133. Pledge of allegiance required — exemption for students and teachers.

20-7-134. Access to public high school campuses — definition.

Part 2 — Libraries

- 20-7-201. State visual, aural, and other educational media library.
- 20-7-202. School library required.
- 20-7-203. Trustees' policies for school library.
- 20-7-204. School library book selection.
- 20-7-205. Reporting school library information.

Part 3 — Vocational and Technical Education

- 20-7-301. Duties of superintendent of public instruction.
- 20-7-302. Repealed.
- 20-7-302.1. Renumbered 20-7-308.
- 20-7-303. Authorization to establish and maintain K-12 career and vocational/technical education courses and programs.
- 20-7-304. Repealed.
- 20-7-305. Funding for secondary K-12 career and vocational/technical education programs — application — rules.
- 20-7-306. Distribution of secondary K-12 career and vocational/technical education funds.
- 20-7-307 reserved.
- 20-7-308. State director of K-12 career and vocational/technical education — duties.
- 20-7-309 and 20-7-310 reserved.
- 20-7-311. Renumbered 20-16-106.
- 20-7-312. Renumbered 20-16-104.
- 20-7-313. Repealed.
- 20-7-314. Renumbered 20-16-108.
- 20-7-315 through 20-7-320 reserved.
- 20-7-321. Acceptance of acts of congress for vocational education.
- 20-7-322. Renumbered 20-16-201.
- 20-7-323. Repealed.
- 20-7-324. Renumbered 20-16-202.
- 20-7-325. Renumbered 20-16-204.
- 20-7-326. Repealed.
- 20-7-327. Renumbered 20-16-203.
- 20-7-328. Legislative intent.
- 20-7-329. Eligible agency for federal vocational education requirements.
- 20-7-330. Creation of state plan committee — meetings — report.
- 20-7-331. Repealed.
- 20-7-332. Renumbered 20-16-205.
- 20-7-333. Renumbered 20-16-206.

Part 4 — Special Education for Exceptional Children

- 20-7-401. Definitions.
- 20-7-402. Special education to comply with board policies.
- 20-7-403. Duties of superintendent of public instruction.
- 20-7-404. Cooperation of state agencies.
- 20-7-405 through 20-7-410 reserved.
- 20-7-411. Regular classes preferred — obligation to establish special education program.
- 20-7-412. Repealed.
- 20-7-413. Repealed.
- 20-7-414. Determination of children in need and type of special education needed.
- 20-7-415. Repealed.
- 20-7-416 through 20-7-418 reserved.
- 20-7-419. Rules.
- 20-7-420. Residency requirements — financial responsibility for special education.
- 20-7-421. Arranging attendance in another district in lieu of a special education program — tuition.
- 20-7-422. Out-of-state placement of child with disability — payment of costs.
- 20-7-423. Repealed.
- 20-7-424. No tuition when attending state institution.
- 20-7-425 through 20-7-430 reserved.
- 20-7-431. Allowable cost schedule for special programs — superintendent to make rules — annual accounting.
- 20-7-432 through 20-7-434 reserved.
- 20-7-435. Funding of educational programs at in-state children's psychiatric hospitals and in-state residential treatment programs for eligible children.
- 20-7-436. Definitions.
- 20-7-437. Renumbered 20-5-316.
- 20-7-438 through 20-7-440 reserved.
- 20-7-441. Repealed.
- 20-7-442. Repealed.
- 20-7-443. Financial assistance for under-six-year-old special education services.
- 20-7-444 through 20-7-450 reserved.
- 20-7-451. Authorization to create full service education cooperatives.

- 20-7-452. Detailed contents of full service education cooperative contracts.
- 20-7-453. Repealed.
- 20-7-454. Final approval and filing of full service education cooperative contract.
- 20-7-455. Authorization to appropriate funds for purpose of full service education cooperative contract.
- 20-7-456. Tenure of teachers employed by cooperatives.
- 20-7-457. Funding provisions for special education purposes of cooperatives or joint boards.
- 20-7-458. Repealed.
- 20-7-459 and 20-7-460 reserved.
- 20-7-461. Appointment and termination of appointment of surrogate parent.
- 20-7-462. Responsibilities of surrogate parent.
- 20-7-463. Surrogate parent — immunity from liability — reimbursement.
- 20-7-464 through 20-7-469 reserved.
- 20-7-470. Blind persons' literacy rights and education — short title.
- 20-7-471. Blind persons' literacy rights and education — definitions.
- 20-7-472. Individualized education program for child with blindness.
- 20-7-473. Standards of competency and instruction — Braille reading and writing.
- 20-7-474. Instructional materials and Braille equipment — Braille equipment loan program.
- 20-7-475. Blind persons' literacy rights and education — personnel training.

Part 5 — Traffic Education

- 20-7-501. Definitions.
- 20-7-502. Duties of superintendent of public instruction.
- 20-7-503. District establishment of traffic education program.
- 20-7-504. State traffic education account — proceeds earmarked for account — transmittal.
- 20-7-505. Repealed.
- 20-7-506. Annual allocation and distribution of traffic education account proceeds.
- 20-7-507. District traffic education fund.
- 20-7-508 and 20-7-509 reserved.
- 20-7-510. Renumbered 20-25-1003.
- 20-7-511. Renumbered 20-25-1004.
- 20-7-512. Renumbered 20-25-1005.
- 20-7-513. Renumbered 20-25-1006.
- 20-7-514. Renumbered 20-25-1007.

Part 6 — Textbook Regulation

- 20-7-601. Free textbook provisions.
- 20-7-602. Textbook selection and adoption.
- 20-7-603. Textbooks obtained from licensed textbook dealer.
- 20-7-604. Licensing textbook dealers.
- 20-7-605. Notification and processing of complaint against licensed textbook dealer.
- 20-7-606. Doing business without textbook dealer's license — penalty.
- 20-7-607. Restricting competition — penalty.
- 20-7-608. Offer or acceptance of emoluments or other inducements — penalty.

Part 7 — Adult Education

- 20-7-701. Definition of adult basic education and adult education.
- 20-7-702. Authorization to establish adult education program.
- 20-7-703. Trustees' policies for adult education.
- 20-7-704. Adult education tuition and fees.
- 20-7-705. Adult education fund.
- 20-7-706 through 20-7-710 reserved.
- 20-7-711. State policy for adult basic education.
- 20-7-712. Adult basic education fund and its distribution.
- 20-7-713. Adult education fund operating reserve.
- 20-7-714. County adult literacy programs — authorization to levy tax and establish fund.

Part 8 — Public Recreation

- 20-7-801. Public recreation program authorized.
- 20-7-802. How program operated — independently or cooperatively — delegation.
- 20-7-803. Authority to accept gifts.
- 20-7-804. Authority of board of public education.
- 20-7-805. Recreational use of school facilities secondary.

Part 9 — Gifted and Talented Children

- 20-7-901. Definitions.
- 20-7-902. School district programs to identify and serve the gifted and talented child.
- 20-7-903. Programs to serve gifted and talented children — compliance with board policy — funding.
- 20-7-904. Review and recommendations of proposals.

Part 10 — Distance Learning (Repealed)

**Part 11 — Earthquake Emergency Procedures
(Repealed)**

Chapter Cross-References

Educational goals and duties, Art. X, sec. 1, Mont. Const.
Tax checkoff for agriculture in Montana schools, 15-30-151, 15-30-152.

**Part 1
Accreditation and Curriculum**

20-7-101. Standards of accreditation. (1) Standards of accreditation for all schools must be adopted by the board of public education upon the recommendations of the superintendent of public instruction.

(2) Prior to adoption or amendment of any accreditation standard, the board shall submit each proposal to the education and local government interim committee for review. The interim committee shall request a fiscal analysis to be prepared by the legislative fiscal division. The legislative fiscal division shall provide its analysis to the interim committee and to the office of budget and program planning to be used in the preparation of the executive budget.

(3) If the fiscal analysis of the proposal is found by the legislative fiscal division to have a substantial fiscal impact, the board may not implement the standard until July 1 following the next regular legislative session and shall request that the same legislature fund implementation of the proposed standard. A substantial fiscal impact is an amount that cannot be readily absorbed in the budget of an existing school district program.

(4) Standards for the retention of school records must be as provided in 20-1-212.

History: En. 75-7501 by Sec. 372, Ch. 5, L. 1971; R.C.M. 1947, 75-7501; amd. Sec. 2, Ch. 543, L. 1983; amd. Sec. 4, Ch. 208, L. 2005.

20-7-102. Accreditation of schools. (1) The conditions under which each elementary school, each middle school, each junior high school, 7th and 8th grades funded at high school rates, and each high school operates must be reviewed by the superintendent of public instruction to determine compliance with the standards of accreditation. The accreditation status of each school must then be established by the board of public education upon the recommendation of the superintendent of public instruction. Notification of the accreditation status for the applicable school year or years must be given to each district by the superintendent of public instruction.

(2) A school may be accredited for a period consisting of 1, 2, 3, 4, or 5 school years, except that multiyear accreditation may be granted only to schools that are in compliance with 20-4-101.

(3) A nonpublic school may, through its governing body, request that the board of public education accredit the school. Nonpublic schools may be accredited in the same manner as provided in subsection (1).

(4) As used in this section, “7th and 8th grades funded at high school rates” means an elementary school district or K-12 district elementary program whose 7th and 8th grades are funded as provided in 20-9-306(14)(c)(ii).

History: En. 75-7502 by Sec. 373, Ch. 5, L. 1971; amd. Sec. 4, Ch. 352, L. 1974; R.C.M. 1947, 75-7502; amd. Sec. 1, Ch. 270, L. 1979; amd. Sec. 1, Ch. 150, L. 1983; amd. Sec. 1, Ch. 73, L. 2001; amd. Secs. 3, 4, Ch. 462, L. 2005; amd. Sec. 6, Ch. 4, Sp. L. December 2005.

Compiler’s Comments

2005 Special Session Amendment — Code Commissioner Clarification: (Version effective July 1, 2006) Chapter 4 in (4) at end substituted “20-9-306(14)(c)(ii)” for “20-9-306(11)(c)(ii)”; and made minor changes in style. Amendment effective July 1, 2006.

(Former July 1, 2007, version) In (4) at end substituted “20-9-306(14)(c)(ii)” for “20-9-306(10)(c)(ii)”; and made minor changes in style.

Because the effect of the amendments to the July 1, 2007, version was to make the section identical to the July 1, 2006, version, the code commissioner has not codified the July 1, 2007, version. The amendments also rendered the termination date provided in sec. 25(2), Ch. 462, L. 2005, ineffective.

Effective Date — Applicability: Section 15, Ch. 4, Sp. L. December 2005, provided: “[This act] is effective July 1, 2006, and applies to school budgets for school fiscal years beginning on or after July 1, 2006.”

Cross-References

School district assessment for placement of child who enrolls from nonaccredited, nonpublic school, 20-5-110.
Definitions of various schools, 20-6-501.

20-7-103 through 20-7-110 reserved.

20-7-111. Instruction in public schools. The board of public education shall define and specify the basic instructional program for pupils in public schools, and such program shall be set forth in the standards of accreditation. Other instruction may be given when approved by the board of trustees.

History: En. 75-7503.1 by Sec. 1, Ch. 137, L. 1975; R.C.M. 1947, 75-7503.1.

Cross-References

Duty of Superintendent or principal to recommend course of instruction, 20-4-402.

Enrollment in private school providing equivalent instruction as excuse from required enrollment in public schools, 20-5-102.

Nonpublic school requirements for compulsory enrollment exemption, 20-5-109.

20-7-112. Sectarian publications prohibited and prayer permitted. A publication of a sectarian or denominational character may not be distributed in any school. Instruction may not be given advocating sectarian or denominational doctrines. However, any teacher, principal, or superintendent may open the school day with a prayer. This section does not prohibit a school library from including the Bible or other religious material having cultural, historical, or educational significance.

History: En. 75-7521 by Sec. 392, Ch. 5, L. 1971; R.C.M. 1947, 75-7521; amd. Sec. 1, Ch. 367, L. 1989.

Cross-References

Freedom of religion guaranteed, Art. II, sec. 5, Mont. Const.

Teaching of sectarian tenets or requiring attendance at religious service prohibited, Art. X, sec. 7, Mont. Const.

Religious instruction released time program, 20-1-308.

20-7-113. Maintenance of curriculum guide file and publishing curriculum guides by superintendent of public instruction. The superintendent of public instruction shall collect and maintain a file of curriculum guides to be made available to districts for the use of schools in planning courses of instruction. He may prepare, publish, and distribute curriculum guides for the use of schools in planning courses of instruction. He may solicit the assistance of educators and other qualified persons in the preparation of curriculum guides.

History: En. 75-7505 by Sec. 376, Ch. 5, L. 1971; R.C.M. 1947, 75-7505.

20-7-114. Instructional assistance by superintendent of public instruction. The superintendent of public instruction shall, at the request of the district or county superintendent, assist the schools with the planning, implementation, operation, and evaluation of instruction through inservice training and individual consultation.

History: En. 75-7506 by Sec. 377, Ch. 5, L. 1971; R.C.M. 1947, 75-7506.

Cross-References

Pupil-instruction-related day, 20-1-304.

20-7-115. Private music instruction. Schools may grant credit to pupils completing courses of private music instruction conducted outside of school hours and at the pupils' own expense. The instruction shall be provided by a teacher holding a valid Montana teacher's certificate with a music endorsement. The district granting such credit shall provide adequate supervision for the instruction and shall determine the allowable credit for such courses.

History: En. 75-7508 by Sec. 379, Ch. 5, L. 1971; R.C.M. 1947, 75-7508.

20-7-116. Supervised correspondence study. The trustees of any district may provide supervised correspondence study for a pupil when it is impossible for him to attend a school due to the isolation of his residence or his mental or physical incapacity. Supervision of the correspondence course shall be provided by the district superintendent or the county superintendent if there is no district superintendent.

History: En. 75-7510 by Sec. 381, Ch. 5, L. 1971; R.C.M. 1947, 75-7510.

Cross-References

Duty of trustees to provide alternate forms of transportation, 20-10-121.

Reimbursement for supervised home study, 20-10-125, 20-10-142.

20-7-117. Kindergarten and preschool programs. (1) The trustees of an elementary district shall establish or make available a kindergarten program capable of accommodating, at a minimum, all the children in the district who will be 5 years old on or before September 10 of the school year for which the program is to be conducted or who have been enrolled by special permission of the board of trustees. The kindergarten program, which the trustees may

designate as either a half-time or full-time program, must be an integral part of the elementary school and must be financed and governed accordingly, provided that to be eligible for inclusion in the calculation of ANB pursuant to 20-9-311, a child must have reached 5 years of age on or before September 10 of the school year covered by the calculation or have been enrolled by special permission of the board of trustees. A kindergarten program must meet the minimum aggregate hour requirements established in 20-1-301. A kindergarten program that is designated as a full-time program must allow a parent, guardian, or other person who is responsible for the enrollment of a child in school, as provided in 20-5-102, to enroll the child half-time.

(2) The trustees of an elementary school district may establish and operate a free preschool program for children between the ages of 3 and 5 years. When preschool programs are established, they must be an integral part of the elementary school and must be governed accordingly. Financing of preschool programs may not be supported by money available from state equalization aid.

History: En. 75-7507 by Sec. 378, Ch. 5, L. 1971; amd. Sec. 3, Ch. 345, L. 1973; R.C.M. 1947, 75-7507; amd. Sec. 3, Ch. 334, L. 1979; amd. Sec. 68, Ch. 370, L. 1987; amd. Sec. 1, Ch. 399, L. 1991; amd. Sec. 11, Ch. 1, Sp. L. May 2007.

Compiler's Comments

2007 Special Session Amendment: Chapter 1 in (1) in first sentence after "or make available a" inserted "kindergarten", in second sentence near beginning inserted "kindergarten" and after "program" inserted reference to designation by trustees as either half-time or full-time program, and inserted third and fourth sentences requiring kindergarten program to meet minimum aggregate hour requirements and allowing half-time enrollment of child in full-time program; and made minor changes in style. Amendment effective July 1, 2007.

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

Cross-References

Definition of various schools, 20-6-501.

Circumstances under which regular average number belonging may be increased, 20-9-313.

20-7-118. Offsite provision of educational services by school district. (1) A school district may provide educational services at an offsite instructional setting, including the provision of services through electronic means. A district shall comply with any rules adopted by the board of public education that specify standards for the provision of educational services at an offsite instructional setting. The provision of educational services at an offsite instructional setting by a district is limited to pupils:

- (a) meeting the residency requirements for that district as provided in 1-1-215;
- (b) living in the district and eligible for educational services under the Individuals With Disabilities Education Act or under 29 U.S.C. 794; or
- (c) attending school in the district under a mandatory attendance agreement as provided in 20-5-321.

(2) The superintendent of public instruction shall adopt rules for the administration and enforcement of this section.

History: En. Sec. 1, Ch. 570, L. 2005.

20-7-119 through 20-7-130 reserved.

20-7-131. Equivalency of completion of secondary education. The superintendent of public instruction shall issue, in accordance with the policies of the board of public education, appropriate documentation certifying that an eligible applicant has satisfied requirements for equivalency of completion of secondary education. Equivalency of completion of secondary education must include satisfactory completion of a testing program or an external diploma program approved by the board of public education.

History: En. Sec. 2, Ch. 94, L. 1983.

Cross-References

Board of Public Education — rules, 20-2-121.

20-7-132. Firearms safety education. The trustees of a district are encouraged to establish and maintain a firearms safety education course. The trustees may adopt a course of instruction developed by the department of fish, wildlife, and parks, a law enforcement agency, or a firearms association as its firearms safety education course. Instructors from the department of fish, wildlife, and parks, a law enforcement agency, or a firearms association or a

person recognized by the trustees as having expertise in firearms safety education may be used to provide the instruction.

History: En. Sec. 1, Ch. 138, L. 1997.

20-7-133. Pledge of allegiance required — exemption for students and teachers.

(1) Except as provided in subsection (4), the pledge of allegiance to the flag of the United States of America must be recited in all public schools of the state.

(2) The recitation required in subsection (1) must be conducted at the beginning of the first class:

(a) of each school day in kindergarten through grade 6; and

(b) of each school week in grades 7 through 12.

(3) The recitation must be conducted:

(a) by each individual classroom teacher or the teacher's surrogate; or

(b) over the school intercom system by a faculty member or person designated by the principal.

(4) A school district shall inform all students and teachers of their right to not participate in recitation of the pledge. Any student or teacher who, for any reason, objects to participating in the pledge exercise must be excused from participation. A student or teacher who declines to participate in the pledge may engage in any alternative form of conduct so long as that conduct does not materially or substantially disrupt the work or discipline of the school.

(5) If a student or teacher declines to participate in the recitation of the pledge pursuant to this section, a school district may not for evaluation purposes include any reference to the student's or teacher's not participating.

History: En. Sec. 1, Ch. 320, L. 1997.

Cross-References

Individual dignity, Art. II, sec. 4, Mont. Const.

20-7-134. Access to public high school campuses — definition. (1) The access provided to recruiters for the United States armed forces by a public high school must be equal to the access granted to other recruiting groups and organizations. The access must include any directory information that may be released about students pursuant to the Family Educational Rights and Privacy Act of 1974. Parents or legal guardians have the right to inform the high school that they do not wish to have an armed forces recruiter speak to their children.

(2) For purposes of this section, "armed forces" means the United States army, air force, navy, marines, coast guard, and merchant marine, including the United States military reserves of these services, the Montana national guard, and the service academies and training programs for these services.

History: En. Sec. 1, Ch. 271, L. 2003.

Part 2 Libraries

Part Cross-References

Authority of Superintendent of Public Instruction to employ educational media supervisor, 20-3-104.
Libraries, Title 22, ch. 1.

20-7-201. State visual, aural, and other educational media library. A library of visual, aural, and other educational media shall be established and maintained by the superintendent of public instruction. The media shall be selected by the superintendent of public instruction on the basis of their usefulness as teaching aids and resources for schools and other educational groups within the state and shall be made available to such schools and groups on a rental fee basis. The rental fees for the use of the materials in the library shall be set by the superintendent of public instruction and shall be deposited in the audiovisual and media library account in the state special revenue fund. The superintendent of public instruction may use these funds, as well as any other funds advanced by a legislative appropriation to the audiovisual and media library account, for the operation, maintenance, enlargement, and other related costs of the library.

History: En. 75-7511 by Sec. 382, Ch. 5, L. 1971; amd. Sec. 1, Ch. 193, L. 1974; R.C.M. 1947, 75-7511; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 2, Ch. 470, L. 1987.

20-7-202. School library required. The trustees of each district shall establish and maintain a school library in each school of the district. Each school library shall comply with at least the minimum requirements of the standards of accreditation adopted by the board of public education.

History: En. 75-7517 by Sec. 388, Ch. 5, L. 1971; R.C.M. 1947, 75-7517.

Cross-References

Contracts with public library board of trustees, 22-1-309.

20-7-203. Trustees' policies for school library. The trustees shall adopt those policies necessary for regulating the use and operation of school libraries. These policies may provide for the use of school libraries by the residents of the district, provided that such use does not interfere with the regular school use of the library.

History: En. 75-7518 by Sec. 389, Ch. 5, L. 1971; R.C.M. 1947, 75-7518.

20-7-204. School library book selection. School library books shall be selected by the district superintendent or a principal if there is no district superintendent, subject to the approval of the trustees. In districts not employing a superintendent or principal, the trustees shall select the school library books on the basis of recommendations of the county superintendent.

History: En. 75-7519 by Sec. 390, Ch. 5, L. 1971; R.C.M. 1947, 75-7519.

20-7-205. Reporting school library information. The trustees shall report school library information requested by the superintendent of public instruction, by the board of public education, or when there is no district superintendent or principal, by the county superintendent.

History: En. 75-7520 by Sec. 391, Ch. 5, L. 1971; R.C.M. 1947, 75-7520.

Part 3 Vocational and Technical Education

Part Cross-References

Vocational-technical education defined, 20-1-101.

20-7-301. Duties of superintendent of public instruction. The superintendent of public instruction is the governing agent and executive officer of the state of Montana for K-12 career and vocational/technical education. The superintendent of public instruction shall adopt and administer policies to effect the orderly development of a system of K-12 career and vocational/technical education that is adaptable to changing needs, controlled to prevent unnecessary duplication, coordinated with federal guidelines and requirements for K-12 career and vocational/technical education, and funded to ensure growth and quality programming. In order to accomplish the orderly development of a system of K-12 career and vocational/technical education, the policies adopted by the superintendent of public instruction must include:

- (1) a state plan for development of the system;
- (2) standards for K-12 career and vocational/technical education courses and programs;
- (3) a review process for the establishment and deletion of programs;
- (4) instructor qualifications for K-12 career and vocational/technical education courses and programs;
- (5) criteria for approval of K-12 career and vocational/technical education courses and programs;
- (6) a basis for apportionment of all money appropriated by the legislature for K-12 career and vocational/technical education in accordance with the intent of the legislature as reflected in the terms of the appropriation;
- (7) a basis for apportionment of all money received by the state of Montana for K-12 career and vocational/technical education from the federal government in accordance with the acts of congress;
- (8) a system of evaluation of K-12 career and vocational/technical education that allows for consideration of the current and projected workforce needs and job opportunities; and
- (9) any other policy that is consistent with public law and that is necessary for the proper operation of a system of K-12 career and vocational/technical education.

History: En. 75-7702 by Sec. 405, Ch. 5, L. 1971; (amd. Sec. 1, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 1, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7702; amd. Sec. 1, Ch. 598, L. 1979; amd. Sec. 11, Ch. 658, L. 1987; amd. Sec. 6, Ch. 133, L. 2001.

20-7-302. Repealed. Sec. 21, Ch. 598, L. 1979.

History: En. 75-7703 by Sec. 406, Ch. 5, L. 1971; (amd. Sec. 2, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 2, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7703.

20-7-302.1. Renumbered 20-7-308. Code Commissioner, 2001.

20-7-303. Authorization to establish and maintain K-12 career and vocational/technical education courses and programs. The trustees of an elementary or high school district may establish and maintain a K-12 career and vocational/technical education course or program that complies with the K-12 career and vocational/technical education standards adopted by the superintendent of public instruction. In order for a course or program to be eligible for state or federal funding, it must be approved by the superintendent of public instruction for compliance with K-12 career and vocational/technical education standards.

History: En. 75-7704 by Sec. 407, Ch. 5, L. 1971; (amd. Sec. 5, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 5, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7704; amd. Sec. 13, Ch. 598, L. 1979; amd. Sec. 13, Ch. 658, L. 1987; amd. Sec. 8, Ch. 133, L. 2001.

Cross-References

Powers and duties of community college trustees, 20-15-225.

20-7-304. Repealed. Sec. 31, Ch. 658, L. 1987.

History: En. Sec. 7, Ch. 598, L. 1979.

20-7-305. Funding for secondary K-12 career and vocational/technical education programs — application — rules. (1) The superintendent of public instruction shall annually distribute money from the biennial appropriation for secondary K-12 career and vocational/technical education. The money must be allocated to high school districts providing approved secondary K-12 career and vocational/technical education programs in accordance with this section and 20-7-306.

(2) A high school district providing secondary K-12 career and vocational/technical education programs shall apply to the superintendent of public instruction for funds available under this section and 20-7-306. The superintendent of public instruction shall by rule prescribe the method for distribution, the form of the application, budget procedures, and accounting rules for the funds. The superintendent of public instruction may prescribe other requirements for the receipt of funding consistent with Title 20, chapter 7, part 3.

(3) A secondary K-12 career and vocational/technical education program in a high school district may not be funded until that program has been offered by the school district for 1 school year.

(4) As used in this section and 20-7-306 the term “school district” means a district organized for the purpose of providing educational services for grades 9 through 12, but the term does not include postsecondary vocational education centers.

History: En. Sec. 1, Ch. 287, L. 1981; amd. Sec. 9, Ch. 133, L. 2001.

Cross-References

ANB defined, 20-1-101.

Definition of elementary and high school districts, 20-6-101.

Definition of various schools, 20-6-501.

Calculation of average number belonging, 20-9-311.

20-7-306. Distribution of secondary K-12 career and vocational/technical education funds. (1) The superintendent of public instruction shall categorize secondary K-12 career and vocational/technical education programs according to the relative additional costs of those programs based on weighted factors, including but not limited to:

- (a) K-12 career and vocational/technical education enrollment;
- (b) approved career and technical student organizations;
- (c) field supervision of students beyond the school year for K-12 career and vocational/technical education; and
- (d) district expenditures related to the K-12 career and vocational/technical education programs.

(2) The superintendent of public instruction shall adjust the weighted factors outlined in subsection (1) as necessary to ensure that the allocations do not exceed the amount appropriated.

(3) Except for other expenditures outlined in subsection (1)(d), funding must be based upon the calculation for secondary K-12 career and vocational/technical education programs of the high school district in the year preceding the year for which funding is requested. Funding for the expenditures referred to in subsection (1)(d) must be based on the calculation for the secondary K-12 career and vocational/technical education programs of the high school district for the 2 years preceding the year for which funding is requested. The funding must be computed for each separate secondary K-12 career and vocational/technical education program.

(4) For secondary career and vocational/technical education programs, the total funding must be distributed to eligible programs based on the four factors listed in subsections (1)(a) through (1)(d).

(5) The superintendent of public instruction shall annually distribute the funds allocated in this section by November 1. The money received by the high school district must be deposited into the subfund of the miscellaneous programs fund established by 20-9-507 and may be expended only for approved secondary K-12 career and vocational/technical education programs. The expenditure of the money must be reported in the annual trustees' report as required by 20-9-213.

History: En. Sec. 2, Ch. 287, L. 1981; amd. Sec. 5, Ch. 337, L. 1989; amd. Sec. 50, Ch. 633, L. 1993; amd. Sec. 10, Ch. 133, L. 2001.

Cross-References

Calculation of average number belonging, 20-9-311.

20-7-307 reserved.

20-7-308. State director of K-12 career and vocational/technical education — duties. There is a state director of K-12 career and vocational/technical education appointed by the superintendent of public instruction. The director shall:

(1) administer the K-12 career and vocational/technical education policies adopted by the superintendent of public instruction;

(2) prepare curriculum guides for adoption by the superintendent of public instruction;

(3) employ, with the confirmation of the superintendent of public instruction, professional staff consisting of individuals prepared in agriculture education, business and marketing education, family and consumer sciences education, and industrial technology education;

(4) report the status of K-12 career and vocational/technical education in the state of Montana when requested by the superintendent of public instruction;

(5) keep all K-12 career and vocational/technical education records in the director's office;

(6) provide K-12 career and vocational/technical education supervisory and consultative assistance to districts;

(7) prepare any necessary reports for the superintendent of public instruction or the legislature; and

(8) perform any other duty assigned by the superintendent of public instruction.

History: En. Sec. 2, Ch. 598, L. 1979; amd. Sec. 12, Ch. 658, L. 1987; amd. Sec. 7, Ch. 133, L. 2001; Sec. 20-7-302.1, MCA 1999; redes. 20-7-308 by Code Commissioner, 2001.

20-7-309 and 20-7-310 reserved.

20-7-311. Renumbered 20-16-106. Sec. 33, Ch. 658, L. 1987.

20-7-312. Renumbered 20-16-104. Sec. 33, Ch. 658, L. 1987.

20-7-313. Repealed. Sec. 31, Ch. 658, L. 1987.

History: En. 75-7711 by Sec. 414, Ch. 5, L. 1971; R.C.M. 1947, 75-7711.

20-7-314. Renumbered 20-16-108. Sec. 33, Ch. 658, L. 1987.

20-7-315 through 20-7-320 reserved.

20-7-321. Acceptance of acts of congress for vocational education. The state of Montana hereby reaffirms the acceptance of and assents to the terms and provisions of the act of congress entitled the "Vocational Education Act of 1963" and the "Vocational Education Amendments of 1968" and further hereby accepts and assents to the terms and provisions of all

acts of the congress amendatory of the “Vocational Education Act of 1963” and to the terms and provisions of all other acts of congress which provide funds for the benefit of vocational education in Montana.

History: En. 75-7705 by Sec. 408, Ch. 5, L. 1971; R.C.M. 1947, 75-7705.

20-7-322. Renumbered 20-16-201. Sec. 33, Ch. 658, L. 1987.

20-7-323. Repealed. Sec. 31, Ch. 658, L. 1987.

History: En. 75-7708 by Sec. 411, Ch. 5, L. 1971; (amd. Sec. 9, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 9, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7708; amd. Sec. 17, Ch. 598, L. 1979.

20-7-324. Renumbered 20-16-202. Sec. 33, Ch. 658, L. 1987.

20-7-325. Renumbered 20-16-204. Sec. 33, Ch. 658, L. 1987.

20-7-326. Repealed. Sec. 31, Ch. 658, L. 1987.

History: En. Sec. 5, Ch. 598, L. 1979; amd. Sec. 1, Ch. 161, L. 1983.

20-7-327. Renumbered 20-16-203. Sec. 33, Ch. 658, L. 1987.

20-7-328. Legislative intent. (1) It is the intent of the legislature that the administration of the programs authorized by the Carl D. Perkins Vocational and Applied Technology Education Act provide a seamless system of services to those people seeking to improve their vocational and technical skills.

(2) It is the intent of the legislature that the superintendent of public instruction and the commissioner work cooperatively in providing that system of vocational and technical services at both the secondary and postsecondary levels.

(3) It is the intent of the legislature that the development of the state plan for vocational and technical education be a cooperative effort of the superintendent of public instruction and the commissioner in consultation with teachers, students, and institutions or agencies that provide the services and activities.

History: En. Sec. 1, Ch. 460, L. 1999.

20-7-329. Eligible agency for federal vocational education requirements. (1) The board of regents is the eligible agency for purposes of the 1984 federal Carl D. Perkins Vocational and Applied Technology Education Act, as amended, which requires a state participating in programs under that act to designate a state board as the eligible agency responsible for administration or supervision of those programs.

(2) The board of regents shall contract with the superintendent of public instruction for the administration and supervision of K-12 career and vocational/technical education programs, services, and activities allowed by the 1984 federal Carl D. Perkins Vocational and Applied Technology Education Act, as amended, and in concert with the state plan for vocational and technical education required by the act. The board of regents may contract with other agencies for the administration and supervision of vocational-technical education programs, services, and activities that receive funding allowed by the 1984 federal Carl D. Perkins Vocational and Applied Technology Education Act, as amended.

History: En. Sec. 2, Ch. 460, L. 1999; amd. Sec. 11, Ch. 133, L. 2001.

20-7-330. Creation of state plan committee — meetings — report. (1) The superintendent of public instruction and the commissioner shall each appoint three people from their respective advisory boards to serve on a committee to review and update the 5-year state plan for vocational and technical education as required by 20 U.S.C. 2323. Two members appointed from each advisory board must be educators, and the remaining member appointed from each advisory board must be a representative of a business or community interest.

(2) At least four times a year, the board of regents shall meet with the superintendent of public instruction, teachers, students, labor organizations, businesses, and institutions or agencies involved in vocational and technical education to:

(a) discuss the state plan;

(b) identify any issues or concerns with the administration of the Carl D. Perkins Vocational and Applied Technology Education Act in Montana;

(c) identify the needs of vocational-technical students and programs in Montana and determine the best way to meet those needs; and

(d) if necessary, make changes in the administration and operation of the Carl D. Perkins Vocational and Applied Technology Education Act in Montana.

(3) The board of regents shall report the results of the meetings required in subsection (2) to the legislature in accordance with the provisions of 5-11-210.

History: En. Sec. 3, Ch. 460, L. 1999; amd. Sec. 1, Ch. 130, L. 2001.

20-7-331. Repealed. Sec. 31, Ch. 658, L. 1987.

History: En. 75-7712 by Sec. 415, Ch. 5, L. 1971; (amd. Sec. 12, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 12, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7712.

20-7-332. Renumbered 20-16-205. Sec. 33, Ch. 658, L. 1987.

20-7-333. Renumbered 20-16-206. Sec. 33, Ch. 658, L. 1987.

Part 4 Special Education for Exceptional Children

Part Cross-References

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.

Attendance of pupils at schools, Title 20, ch. 5, part 1.

Rights of persons with disabilities, Title 49, ch. 4.

Developmental disabilities, Title 53, ch. 20.

20-7-401. Definitions. In this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Child with a disability” means a child evaluated in accordance with the regulations of the Individuals With Disabilities Education Act as having a disability and who because of the disability needs special education and related services.

(2) “Free appropriate public education” means special education and related services that:

(a) are provided at public expense under public supervision and direction and without charge;

(b) meet the accreditation standards of the board of public education, the special education requirements of the superintendent of public instruction, and the requirements of the Individuals With Disabilities Education Act;

(c) include preschool, elementary school, and high school education in Montana; and

(d) are provided in conformity with an individualized education program that meets the requirements of the Individuals With Disabilities Education Act.

(3) “Related services” means services in accordance with regulations of the Individuals With Disabilities Education Act that are required to assist a child with a disability to benefit from special education.

(4) “Special education” means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a child with a disability, including but not limited to instruction conducted in a classroom, home, hospital, institution, or other setting and instruction in physical education.

(5) “Surrogate parent” means an individual appointed to safeguard a child’s rights and protect the child’s interests in educational evaluation, placement, and hearing or appeal procedures concerning the child.

History: En. 75-7801 by Sec. 419, Ch. 5, L. 1971; amd. Sec. 1, Ch. 93, L. 1974; amd. Sec. 27, Ch. 266, L. 1977; amd. Sec. 1, Ch. 539, L. 1977; R.C.M. 1947, 75-7801; amd. Sec. 1, Ch. 311, L. 1981; amd. Sec. 1, Ch. 461, L. 1983; amd. Sec. 1, Ch. 560, L. 1985; amd. Sec. 1, Ch. 618, L. 1985; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 19, Ch. 16, L. 1991; amd. Sec. 3, Ch. 249, L. 1991; amd. Sec. 1, Ch. 356, L. 1993; amd. Sec. 19, Ch. 472, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 1, Ch. 479, L. 2003.

20-7-402. Special education to comply with board policies. (1) The conduct of special education programs must comply with the policies recommended by the superintendent of public instruction and adopted by the board of public education. These policies must ensure and include but are not limited to:

(a) placement of a child with a disability in the least restrictive environment;

(b) due process for a child with a disability, including the appointment of a surrogate parent if necessary;

(c) use of an evaluation team to identify a child with a disability and to plan individual education programs;

(d) an evaluation process consistent with the requirements of the Individuals With Disabilities Education Act; and

(e) other policies needed to ensure a free appropriate public education.

(2) The superintendent of public instruction shall promulgate rules to administer the policies of the board of public education.

History: En. 75-7802 by Sec. 420, Ch. 5, L. 1971; amd. Sec. 2, Ch. 539, L. 1977; R.C.M. 1947, 75-7802; amd. Sec. 2, Ch. 618, L. 1985; amd. Sec. 10, Ch. 249, L. 1991; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 1, Ch. 255, L. 2005.

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

20-7-403. Duties of superintendent of public instruction. The superintendent of public instruction shall supervise and coordinate the conduct of special education in the state by:

(1) recommending to the board of public education adoption of those policies necessary to establish a planned and coordinated program of special education in the state;

(2) administering the policies adopted by the board of public education;

(3) certifying special education teachers on the basis of the special qualifications for the teachers as prescribed by the board of public education;

(4) establishing procedures to be used by school district personnel in identifying a child with a disability;

(5) preparing appropriate technical assistance documents to assist local districts in implementing special education policies and procedures;

(6) seeking for local districts appropriate interdisciplinary assistance from public and private agencies in identifying the special education needs of children, in planning programs, and in admitting and discharging children from those programs;

(7) assisting local school districts, institutions, and other agencies in developing full-service programs for a child with a disability;

(8) providing technical assistance to district superintendents, principals, teachers, and trustees;

(9) conducting conferences, offering advice, and otherwise cooperating with parents and other interested persons;

(10) ensuring appropriate training and instructional material for persons appointed as surrogate parents that outlines their duties toward the child, limitations on what they may do for the child, duties in relation to the child's records, sources of assistance available to the surrogate parent, and the need to seek competent legal assistance in implementing hearing or appeal procedures;

(11) ensuring that the requirements of the Individuals With Disabilities Education Act are met and that each educational program for a child with a disability, including a homeless child with a disability, administered within the state, including each program administered by any other agency, is under the general supervision of the superintendent of public instruction, meets the education standards of the board of public education, and meets the requirements of the superintendent of public instruction, reserving to the other agencies and political subdivisions their full responsibilities for other aspects of the care of children needing special education or for providing or paying for some or all of the costs of a free appropriate public education to a child with a disability within the state;

(12) contracting for the delivery of audiological services to those children allowed by Montana law in accordance with policies of the board of public education; and

(13) except for those children who qualify for residential services under the Montana public mental health program pursuant to Title 53, chapter 6, contracting with a public school district or a private residential facility for the provision of a free appropriate public education for a child placed in an in-state residential facility or children's psychiatric hospital.

History: En. 75-7803 by Sec. 421, Ch. 5, L. 1971; amd. Sec. 1, Ch. 174, L. 1975; amd. Sec. 3, Ch. 539, L. 1977; R.C.M. 1947, 75-7803; amd. Sec. 1, Ch. 204, L. 1979; amd. Sec. 1, Ch. 434, L. 1981; amd. Sec. 3, Ch. 618, L. 1985; amd. Sec. 10, Ch. 249, L. 1991; amd. Sec. 3, Ch. 765, L. 1991; amd. Sec. 2, Ch. 356, L. 1993; amd. Sec. 4, Ch. 529, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 2, Ch. 255, L. 2005.

Cross-References

Special education supervisor employed by Superintendent of Public Instruction, 20-3-103.

Board of Public Education policies, 20-4-102.

Issuance of teacher or specialist certificates, 20-4-103.

Classifications of teacher and specialist certificates, 20-4-106.

20-7-404. Cooperation of state agencies. The department of public health and human services and the state school for the deaf and blind shall cooperate with the superintendent of public instruction in assisting school districts in discovering children in need of special education. This section may not be construed to interfere with the purpose and function of these state agencies.

History: En. 75-7804 by Sec. 422, Ch. 5, L. 1971; amd. Sec. 5, Ch. 539, L. 1977; R.C.M. 1947, 75-7804; amd. Sec. 23, Ch. 609, L. 1987; amd. Sec. 69, Ch. 546, L. 1995.

20-7-405 through 20-7-410 reserved.

20-7-411. Regular classes preferred — obligation to establish special education program. (1) A child with a disability in Montana is entitled to a free appropriate public education provided in the least restrictive environment. To the maximum extent appropriate, a child with a disability, including a child in a public or private institution or other care facility, must be educated with children who do not have disabilities. Separate schooling or other removal of a child with a disability from the regular educational environment may occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) The board of trustees of every school district shall provide or establish and maintain a special education program for each child with a disability who is 6 years of age or older and under 19 years of age.

(3) The board of trustees of each elementary district shall provide or establish and maintain a special education program for each preschool child with a disability who is 3 years of age or older and under 7 years of age.

(4) (a) The board of trustees of a school district may provide or establish and maintain a special education program for a child with a disability who is 2 years of age or under or who is 19 years of age or older and under 22 years of age.

(b) Programs established pursuant to subsection (4)(a) do not obligate the state or a school district to offer regular educational programs to a similar age group unless specifically provided by law.

(5) The board of trustees of a school district may meet its obligation to serve persons with disabilities by establishing its own special education program, by establishing a cooperative special education program, or by participating in a regional services program.

(6) The trustees of a school district shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education services, related services, or supplementary aids.

History: En. 75-7805 by Sec. 423, Ch. 5, L. 1971; amd. Sec. 1, Ch. 123, L. 1971; amd. Sec. 2, Ch. 93, L. 1974; amd. Sec. 6, Ch. 539, L. 1977; R.C.M. 1947, 75-7805; amd. Sec. 3, Ch. 558, L. 1979; amd. Sec. 1, Ch. 258, L. 1987; amd. Sec. 4, Ch. 249, L. 1991; amd. Sec. 3, Ch. 356, L. 1993; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 3, Ch. 255, L. 2005.

Compiler's Comments

Implementation Contingency: Section 3, Ch. 258, L. 1987, provided: "A board of trustees of a school district is not required to implement this act[, which inserted subsection (3).] if the federal government does not appropriate at least one-half of the authorized amount for each qualifying handicapped preschool child [now preschool child with disabilities] for school fiscal year 1991 and beyond."

Cross-References

Educational goals and duties, Art. X, sec. 1, Mont. Const.

20-7-412. Repealed. Sec. 10, Ch. 255, L. 2005.

History: En. 75-7806 by Sec. 424, Ch. 5, L. 1971; amd. Sec. 1, Ch. 122, L. 1971; amd. Sec. 2, Ch. 123, L. 1971; amd. Sec. 3, Ch. 93, L. 1974; amd. Sec. 7, Ch. 539, L. 1977; R.C.M. 1947, 75-7806; amd. Sec. 4, Ch. 558, L. 1979; amd. Sec. 5, Ch. 249, L. 1991.

20-7-413. Repealed. Sec. 7, Ch. 356, L. 1993.

History: En. 75-7807 by Sec. 425, Ch. 5, L. 1971; amd. Sec. 3, Ch. 123, L. 1971; amd. Sec. 4, Ch. 93, L. 1974; amd. Sec. 8, Ch. 539, L. 1977; R.C.M. 1947, 75-7807.

20-7-414. Determination of children in need and type of special education needed. (1) The determination of the children requiring special education and the type of special education needed by these children is the responsibility of the school district, and the

determination must be made in compliance with the procedures established in the rules of the superintendent of public instruction. The school district shall make available a free appropriate public education, in accordance with 20-7-411, to all children who are eligible under the Individuals With Disabilities Education Act and who reside in the school district.

(2) The trustees of a school district shall establish and implement policies and procedures for the conduct of special education that are consistent with the Individuals With Disabilities Education Act and with state laws and rules of the board of public education and the superintendent of public instruction.

History: En. 75-7811 by Sec. 429, Ch. 5, L. 1971; amd. Sec. 12, Ch. 539, L. 1977; R.C.M. 1947, 75-7811; amd. Sec. 4, Ch. 618, L. 1985; amd. Sec. 17, Ch. 11, Sp. L. June 1989; amd. Sec. 6, Ch. 249, L. 1991; amd. Sec. 4, Ch. 356, L. 1993; amd. Sec. 55, Ch. 633, L. 1993; amd. Sec. 4, Ch. 255, L. 2005.

Cross-References

Guardians of minors, Title 72, ch. 5, part 2.

20-7-415. Repealed. Sec. 7, Ch. 356, L. 1993.

History: En. 75-7817 by Sec. 4, Ch. 539, L. 1977; R.C.M. 1947, 75-7817; amd. Sec. 10, Ch. 249, L. 1991.

20-7-416 through 20-7-418 reserved.

20-7-419. Rules. The superintendent of public instruction shall adopt rules for the implementation of 20-7-420, 20-7-421, 20-7-422, 20-7-435, and 20-7-436, including but not limited to:

- (1) the calculation of tuition under 20-7-420;
- (2) the calculation and distribution of funds under 20-7-435; and
- (3) the determination of responsibilities of children's psychiatric hospitals, residential treatment facilities, and public schools.

History: En. Sec. 7, Ch. 375, L. 1993.

20-7-420. Residency requirements — financial responsibility for special education. (1) Except for a pupil attending a job corps program pursuant to 20-9-707, a child's district of residence for special education purposes must be determined in accordance with the provisions of 1-1-215, unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent's last-known district of residence is the child's district of residence.

(2) The superintendent of public instruction is financially responsible for tuition and transportation as established under 20-5-323 and 20-5-324 for a child with a disability, as defined in 20-7-401, who attends school outside the district and county of residence because the student has been placed in a foster care or group home licensed by the state. The superintendent of public instruction is not financially responsible for tuition and transportation for a child who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility.

(3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential treatment facility or children's psychiatric hospital, as defined in 20-7-436, and the educational services are provided by a public school district under the provisions of 20-7-411 or 20-7-435, the superintendent of public instruction shall reimburse the district providing the services for the negotiated amount, as established pursuant to 20-7-435(5), that represents the district's costs of providing education and related services. Payments must be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall pay the remaining balance from available funds. However, the amount spent from available funds for this purpose may not exceed \$500,000 during a biennium.

(4) A state agency that makes a placement of a child with a disability is responsible for the financial costs of room and board and the treatment of the child. The state agency that makes an out-of-state placement of a child with a disability is responsible for the education fees required to provide a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4.

History: En. Sec. 1, Ch. 470, L. 1979; amd. Sec. 4, Ch. 765, L. 1991; amd. Sec. 1, Ch. 375, L. 1993; amd. Sec. 10, Ch. 563, L. 1993; amd. Sec. 28, Ch. 509, L. 1995; amd. Sec. 5, Ch. 529, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 6, Ch. 343, L. 1999; amd. Sec. 2, Ch. 132, L. 2005; amd. Sec. 5, Ch. 255, L. 2005; amd. Sec. 4, Ch. 463, L. 2005.

20-7-421. Arranging attendance in another district in lieu of a special education program — tuition. (1) In accordance with a placement decision made by persons determining an individualized education program for a child with a disability, the trustees may arrange for the attendance of a child in need of special education and related services in another district within the state of Montana.

(2) Tuition and transportation as required under 20-5-323 may be charged as provided in 20-7-420.

History: En. 75-7808 by Sec. 426, Ch. 5, L. 1971; amd. Sec. 1, Ch. 140, L. 1975; amd. Sec. 9, Ch. 539, L. 1977; R.C.M. 1947, 75-7808; amd. Sec. 2, Ch. 470, L. 1979; amd. Sec. 2, Ch. 481, L. 1979; amd. Sec. 2, Ch. 661, L. 1979; amd. Sec. 5, Ch. 765, L. 1991; amd. Sec. 2, Ch. 375, L. 1993; amd. Sec. 11, Ch. 563, L. 1993; amd. Sec. 99(4), Ch. 51, L. 1999.

20-7-422. Out-of-state placement of child with disability — payment of costs. (1) In accordance with a placement made by persons determining an individualized education program for a child with a disability, the trustees of a district may arrange for the attendance of the child in a special education program offered outside of the state of Montana.

(2) Except as provided in subsection (3), when the persons determining the individualized education program of a child with a disability who is in need of special education recommend placement in an out-of-state private residential facility, the trustees of the district of residence shall negotiate the amount and manner of payment of all costs associated with the placement.

(3) Whenever a child with a disability who is in need of special education and related services is placed by a state agency in an out-of-state residential facility, the state agency making the placement shall pay the education costs resulting from the placement.

(4) The state agency shall place the child with a disability in a facility that will provide the child with a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4.

History: En. 75-7809 by Sec. 427, Ch. 5, L. 1971; amd. Sec. 2, Ch. 140, L. 1975; amd. Sec. 10, Ch. 539, L. 1977; R.C.M. 1947, 75-7809; amd. Sec. 3, Ch. 661, L. 1979; amd. Sec. 24, Ch. 609, L. 1987; amd. Sec. 18, Ch. 11, Sp. L. June 1989; amd. Sec. 6, Ch. 765, L. 1991; amd. Sec. 3, Ch. 375, L. 1993; amd. Sec. 12, Ch. 563, L. 1993; amd. Sec. 2, Ch. 458, L. 1995; amd. Sec. 6, Ch. 529, L. 1997; amd. Sec. 3, Ch. 550, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999.

20-7-423. Repealed. Sec. 13, Ch. 765, L. 1991.

History: En. 75-7809.1 by Sec. 11, Ch. 539, L. 1977; R.C.M. 1947, 75-7809.1; amd. Sec. 4, Ch. 661, L. 1979; amd. Sec. 10, Ch. 249, L. 1991.

20-7-424. No tuition when attending state institution. Whenever a child is attending a state-funded institution in Montana, the resident district or county is not required to pay tuition to the state institution for the child, but whenever at the recommendation of institution officials the child attends classes conducted by a school within a local district, the district or county where the parents or guardian of the child maintains legal residence shall pay tuition to the district operating the school in accordance with the provisions of 20-5-321 or 20-7-421, whichever section applies to the circumstances of the child. Transportation payments must be made for students enrolled in any school district classes or receiving training, including summer sessions, at the state institution. The schedule of transportation payments must be approved in accordance with existing transportation payment schedules and must be approved by the county transportation committee and the superintendent of public instruction.

History: En. 75-7810 by Sec. 428, Ch. 5, L. 1971; amd. Sec. 1, Ch. 282, L. 1971; amd. Sec. 1, Ch. 45, L. 1973; amd. Sec. 7, Ch. 91, L. 1973; R.C.M. 1947, 75-7810; amd. Sec. 13, Ch. 563, L. 1993.

Cross-References

Duty of trustees to provide transportation, 20-10-121.

20-7-425 through 20-7-430 reserved.

20-7-431. Allowable cost schedule for special programs — superintendent to make rules — annual accounting. (1) For the purpose of determining the allowable cost payment amount for special education as defined in 20-9-321, the following allowable costs and reports must be reviewed by the superintendent of public instruction for the purposes of determining the amount of the allowable cost payment for special education payments and a district's special education expenditures:

(a) instruction: salaries, benefits, supplies, textbooks, and other expenses, including:

(i) the cost of salaries and benefits of special program teachers, regular program teachers, and teacher aides, corresponding to the working time that each person devotes to the special program;

(ii) the total cost of teaching supplies and textbooks for special programs;

(iii) the purchase, rental, repair, and maintenance of instructional equipment required to implement a student's individualized education program;

(iv) activities associated with teacher assistance teams that provide prereferral intervention;

(v) the cost of contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies;

(vi) transportation costs for special education instructional personnel who travel on an itinerant basis from school to school or district to district or to in-state evaluation team meetings or in-state individualized education program meetings;

(b) related services, including:

(i) the cost of salaries and benefits of professional supportive personnel, corresponding to the working time that each person devotes to the special program. Professional supportive personnel may include special education supervisors, speech-language pathologists, audiologists, counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists.

(ii) the cost of salaries and benefits of clerical personnel who assist professional personnel in supportive services, corresponding to the working time that each person devotes to the special program;

(iii) the cost of supplies for special programs;

(iv) activities associated with teacher assistance teams that provide prereferral interventions;

(v) the cost of contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies;

(vi) transportation costs for special education-related services personnel who travel on an itinerant basis from school to school or district to district or to in-state evaluation team meetings or in-state individualized education program meetings;

(vii) equipment purchase, rental, repair, and maintenance required to implement a student's individualized education program;

(viii) the additional cost of special education cooperatives or joint boards, including operation and maintenance, travel, recruitment, and administration.

(2) The superintendent of public instruction shall adopt rules in accordance with the policies of the board of public education for keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs.

(3) An annual accounting of all expenditures of school district general fund money for special education must be made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for the accounting.

(4) Allowable costs prescribed in this section do not include the costs of the teachers' retirement system, the public employees' retirement system, or the federal social security system or the costs for unemployment compensation insurance.

(5) Notwithstanding other provisions of the law, the superintendent of public instruction may not approve an allowable cost payment amount for special education that exceeds legislative appropriations. However, any unexpended balance from the first year of a biennial appropriation may be spent in the second year of the biennium in addition to the second year appropriation.

History: En. 75-7813.1 by Sec. 1, Ch. 344, L. 1974; amd. Sec. 13, Ch. 539, L. 1977; R.C.M. 1947, 75-7813.1; amd. Sec. 1, Ch. 481, L. 1979; amd. Sec. 1, Ch. 661, L. 1979; amd. Sec. 1, Ch. 166, L. 1981; amd. Sec. 1, Ch. 548, L. 1983; amd. Sec. 1, Ch. 376, L. 1985; amd. Sec. 1, Ch. 243, L. 1987; amd. Sec. 19, Ch. 11, Sp. L. June 1989; amd. Sec. 7, Ch. 765, L. 1991; amd. Sec. 1, Ch. 466, L. 1993; amd. Sec. 55, Ch. 633, L. 1993; amd. Sec. 1, Ch. 145, L. 2001; amd. Sec. 6, Ch. 255, L. 2005.

Cross-References

Limit on expenditures, 17-8-103.

Financing special education, 20-9-303.

20-7-432 through 20-7-434 reserved.

20-7-435. Funding of educational programs at in-state children's psychiatric hospitals and in-state residential treatment programs for eligible children. (1) It is the intent of the legislature that eligible children in in-state children's psychiatric hospitals and residential treatment facilities be provided with an appropriate educational opportunity in a cost-effective manner, including the provision of a free appropriate public education for an eligible child with a disability that is consistent with state standards for the provision of special education and related services. General education programs for eligible children without disabilities must be provided in accordance with the requirements for a nonpublic school under the provisions of 20-5-109.

(2) The superintendent of public instruction may contract with an in-state children's psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in the hospital or treatment facility.

(3) Whenever the superintendent of public instruction contracts with an in-state children's psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in the children's psychiatric hospital or residential treatment facility, the superintendent of public instruction shall:

(a) ensure the provision of a free appropriate public education and an education that is consistent with the requirements for a nonpublic school in 20-5-109 for children attending the hospital or residential treatment facility;

(b) negotiate the approval of allowable costs under the provisions of 20-7-431 for allowable costs for providing special education, including the costs of retirement benefits, federal social security system contributions, and unemployment compensation insurance;

(c) from appropriations provided for this purpose, fund any approved allowable costs under this section, with the exception of services for which reimbursement is made under any provision of state or federal law or an insurance policy;

(d) provide funding for allowable costs according to a proration based on average daily membership.

(4) A supplemental education fee or tuition may not be charged for an eligible Montana child who receives inpatient treatment and an education under contract with an in-state children's psychiatric hospital or residential treatment facility.

(5) If a children's psychiatric hospital or residential treatment facility fails to provide an education in accordance with 20-5-109 or a free appropriate public education under the provisions of this part for an eligible child at the children's psychiatric hospital or residential treatment facility or fails to negotiate a contract under the provisions of subsection (2), the superintendent of public instruction shall negotiate with the school district in which the children's psychiatric hospital or residential treatment facility is located for the supervision and implementation of an appropriate educational program that is consistent with accreditation standards provided for in 20-7-111 and with the provisions of 20-7-402 for children attending the children's psychiatric hospital or residential treatment facility. The amount negotiated with the school district must include all education and related services costs that may be negotiated under the provisions of subsection (3) and all education and related services costs necessary to fulfill the requirements of providing the child with an education.

(6) Funds provided to a district under this section, including funds received under the provisions of 20-7-420:

(a) must be deposited in the miscellaneous programs fund of the district that provides the education program for an eligible child, regardless of the age or grade placement of the child who is served under a negotiated contract; and

(b) are not subject to the budget limitations in 20-9-308.

History: En. Sec. 9, Ch. 765, L. 1991; amd. Sec. 4, Ch. 375, L. 1993; amd. Sec. 51, Ch. 633, L. 1993; amd. Sec. 99(4), Ch. 51, L. 1999.

20-7-436. Definitions. For the purposes of 20-7-435 and this section, the following definitions apply:

(1) (a) “Children’s psychiatric hospital” means a freestanding hospital in Montana that:
 (i) has the primary purpose of providing clinical care for children and youth whose clinical diagnosis and resulting treatment plan require in-house residential psychiatric care; and
 (ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of the centers for medicare and medicaid services, or other comparable accreditation.

(b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the primary reason for treatment.

(2) “Eligible child” means a Montana resident child or youth who is less than 19 years of age and who has an emotional problem that is so severe that the child or youth has been placed in a children’s psychiatric hospital or residential treatment facility for inpatient treatment of emotional problems.

(3) (a) “Residential treatment facility” means a facility in the state that:

(i) provides services for children or youth with emotional disturbances;

(ii) operates for the primary purpose of providing residential psychiatric care to individuals under 21 years of age;

(iii) is licensed by the department of public health and human services; and

(iv) participates in the Montana medicaid program for psychiatric facilities or programs providing psychiatric services to individuals under 21 years of age; or

(v) notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv), has received a certificate of need from the department of public health and human services pursuant to Title 50, chapter 5, part 3, prior to January 1, 1993.

(b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the primary reason for treatment.

History: En. Sec. 10, Ch. 765, L. 1991; amd. Sec. 5, Ch. 375, L. 1993; amd. Sec. 34, Ch. 18, L. 1995; amd. Sec. 50, Ch. 418, L. 1995; amd. Sec. 70, Ch. 546, L. 1995; amd. Sec. 2, Ch. 479, L. 2003.

20-7-437. Renumbered 20-5-316. Sec. 21, Ch. 563, L. 1993.

20-7-438 through 20-7-440 reserved.

20-7-441. Repealed. Sec. 10, Ch. 255, L. 2005.

History: En. 75-7814 by Sec. 432, Ch. 5, L. 1971; amd. Sec. 14, Ch. 539, L. 1977; R.C.M. 1947, 75-7814.

20-7-442. Repealed. Sec. 10, Ch. 255, L. 2005.

History: En. 75-7815 by Sec. 433, Ch. 5, L. 1971; R.C.M. 1947, 75-7815; amd. Sec. 4, Ch. 711, L. 1991; amd. Sec. 1, Ch. 9, Sp. L. July 1992.

20-7-443. Financial assistance for under-six-year-old special education services. Any district providing special education services for children under 6 years of age is eligible for financial assistance in accordance with 20-7-431 and for transportation reimbursement in accordance with Title 20, chapters 7 and 10, and rules adopted by the superintendent of public instruction.

History: En. 75-7816 by Sec. 434, Ch. 5, L. 1971; amd. Sec. 2, Ch. 122, L. 1971; amd. Sec. 15, Ch. 539, L. 1977; R.C.M. 1947, 75-7816; amd. Sec. 7, Ch. 255, L. 2005.

Cross-References

Maximum general fund budget for special education, 20-9-321.

Computation of revenue and net tax levy requirements for transportation fund budget, 20-10-144.

County transportation reimbursement, 20-10-146.

20-7-444 through 20-7-450 reserved.

20-7-451. Authorization to create full service education cooperatives. (1) A school district may contract with one or more other school districts to establish a cooperative to perform any or all education administrative services, activities, and undertakings that the school district entering into the contract is authorized by law to perform. The cooperative contract must be authorized by the boards of trustees of the districts entering into the contract.

(2) A cooperative contract may allow money allocated to a cooperative to be expended for:

(a) recruitment of professionals or employees for the cooperative; and

(b) facility rental and supportive services, including but not limited to janitorial and communication services.

History: En. Sec. 1, Ch. 471, L. 1979; amd. Sec. 1, Ch. 156, L. 1985; amd. Sec. 2, Ch. 343, L. 1989; amd. Sec. 1, Ch. 136, L. 1991.

Cross-References

Interlocal Cooperation Act, Title 7, ch. 11, part 1.
Trustees to execute all contracts in name of school district, 20-9-213.
Educational cooperative agreements, Title 20, ch. 9, part 7.

20-7-452. Detailed contents of full service education cooperative contracts. The contract authorized in 20-7-451 may include all necessary and proper matters but must specify the following:

- (1) its duration, which may not be less than 3 years for purposes of providing special education services;
- (2) the precise organization, composition, and nature of the cooperative;
- (3) the purpose of the cooperative;
- (4) the manner of financing the cooperative and establishing and maintaining a budget for the cooperative;
- (5) the permissible method to be employed in accomplishing the partial or complete termination of the cooperative agreement and for disposing of property upon partial or complete termination;
- (6) provision for a management board that is responsible for administering the cooperative and that is comprised of trustees of the contracting districts or their authorized representatives;
- (7) the manner of acquiring, holding, and disposing of real and personal property used by the cooperative;
- (8) any other necessary and proper matters.

History: En. Sec. 2, Ch. 471, L. 1979; amd. Sec. 3, Ch. 343, L. 1989; amd. Sec. 2, Ch. 136, L. 1991.

Cross-References

School property, Title 20, ch. 6, part 6.
Contracts, Title 28, ch. 2.

20-7-453. Repealed. Sec. 14, Ch. 94, L. 2007.

History: En. Sec. 3, Ch. 471, L. 1979.

20-7-454. Final approval and filing of full service education cooperative contract. Prior to commencement of its performance, a full service education cooperative contract made pursuant to 20-7-451, 20-7-452, and 20-7-454 through 20-7-456 must be:

- (1) submitted to the superintendent of public instruction who has final approval authority pursuant to the policies of the board of public education;
- (2) filed with the county clerk and recorder of the county or counties in which the school districts involved are located; and
- (3) filed with the secretary of state.

History: En. Sec. 4, Ch. 471, L. 1979; amd. Sec. 3, Ch. 136, L. 1991; amd. Sec. 4, Ch. 94, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 94 at beginning of introductory clause deleted "Within 10 days after approval by the attorney general" and after "20-7-451" inserted "20-7-452, and 20-7-454"; and made minor changes in style. Amendment effective October 1, 2007.

Cross-References

Filing fees of Secretary of State, 2-6-103.
Fees of County Clerk, 7-4-2631.

20-7-455. Authorization to appropriate funds for purpose of full service education cooperative contract. A school district entering into a full service education cooperative contract pursuant to 20-7-451, 20-7-452, and 20-7-454 through 20-7-456 may appropriate funds for and may sell, lease, or otherwise give or supply to the administrative officer, management board, or joint board created for the purpose of performance of the cooperative contract any material, personnel, or services that are within its legal power to furnish.

History: En. Sec. 5, Ch. 471, L. 1979; amd. Sec. 4, Ch. 136, L. 1991; amd. Sec. 5, Ch. 94, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 94 near beginning after "20-7-451" inserted "20-7-452, and 20-7-454"; and made minor changes in style. Amendment effective October 1, 2007.

Cross-References

School property, Title 20, ch. 6, part 6.

20-7-456. Tenure of teachers employed by cooperatives. (1) Teachers who have tenure rights with a district and are employed by a cooperative of which their district is a member do not lose their tenure with the district.

(2) Nontenured teachers employed by a cooperative acquire tenure with a cooperative in the same manner as prescribed in 20-4-203, and the provisions of 20-4-204 through 20-4-207 are applicable to teachers employed by a cooperative.

(3) Tenure for a teacher employed by a cooperative is acquired only with the cooperative and not with a member school district of a cooperative.

(4) For the purposes of tenure of a teacher employed by a cooperative, cooperative contract renewals may not be used to limit the teacher's progress toward tenure status.

History: En. Sec. 6, Ch. 471, L. 1979; amd. Sec. 5, Ch. 136, L. 1991.

Cross-References

Teacher tenure, 20-4-203.

20-7-457. Funding provisions for special education purposes of cooperatives or joint boards. (1) The superintendent of public instruction shall pay directly to a cooperative or to a joint board formed under 20-3-361 prior to July 1, 1992, for special education purposes the special education allowable cost payments determined pursuant to 20-9-321.

(2) A school district that elects to participate in a cooperative for special education purposes shall agree in the cooperative contract to participate for a period of at least 3 years.

(3) A school district that elects to participate in a joint board formed under 20-3-361 for special education purposes shall confirm in writing to the joint board by October 1 of the current school fiscal year the district's intention to participate or to not participate in a joint board agreement for the next school fiscal year.

(4) A cooperative that has not met the requirements of 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction. The superintendent shall adopt rules for approval of full service education cooperatives.

(5) A full service education cooperative may establish a retirement fund, a miscellaneous programs fund, and a transportation fund, as provided for in 20-9-201, for the purposes of a full service education cooperative contract and the purposes allowed by law.

(6) The superintendent of public instruction, after consulting with regional representatives, shall define boundaries for cooperatives established for special education programs that incorporate the territory of all public school districts.

(7) Restructuring of cooperatives established for providing special education services must:

(a) be limited to a statewide total of no more than 23;

(b) include districts that are adjacent to each other and not overlapping into another cooperative's territory; and

(c) provide that all districts located within a cooperative's boundary may voluntarily become a cooperative member.

History: En. Sec. 4, Ch. 343, L. 1989; amd. Sec. 6, Ch. 136, L. 1991; amd. Sec. 4, Ch. 568, L. 1991; amd. Sec. 2, Ch. 466, L. 1993; amd. Sec. 6, Ch. 94, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 94 in (4) near beginning of first sentence after "requirements of" deleted "20-7-453 and"; in (6) at beginning deleted "Before July 1, 1994"; and made minor changes in style. Amendment effective October 1, 2007.

Cross-References

Joint board organization and voting membership, 20-3-361.

20-7-458. Repealed. Secs. 9, 10(2), Ch. 466, L. 1993.

History: En. Sec. 5, Ch. 343, L. 1989; amd. Sec. 7, Ch. 136, L. 1991.

20-7-459 and 20-7-460 reserved.

20-7-461. Appointment and termination of appointment of surrogate parent. (1) A school district or institution that provides education to a child with a disability shall adopt procedures to assign an individual to act as a surrogate parent for a child with a disability whenever the parents or guardian cannot be identified or, after reasonable efforts, the location of the parents cannot be discovered or if the child is a ward of the state. Within 10 days of determining that a child is in need of a surrogate parent, the school district or its designee or the

governing authority of an institution or its designee shall nominate a surrogate parent and deliver the appropriate documentation to the youth court.

(2) The person nominated as a surrogate parent must be an adult who is not an employee of a state or local educational agency that is providing educational services to the child. The surrogate parent may not have a vested interest that will conflict with the person's representation and protection of the child. The surrogate, whenever practicable, must be knowledgeable about the educational system, special education requirements, and the legal rights of the child in relation to the educational system. Whenever practicable, the surrogate parent must be familiar with the cultural or language background of the child.

(3) The nomination for appointment of a surrogate parent, along with all necessary supporting documents, must be submitted to the youth court for official appointment of the surrogate parent by the court. The trustees of a school district or their designee or the governing authority of an institution or its designee shall take all reasonable action to ensure that the youth court appoints or denies the appointment of a person nominated as a surrogate parent within 20 days of the court's receipt of all necessary supporting documents. If the youth court denies an appointment, the trustees of a district or their designee or the governing authority of an institution or its designee shall nominate another person to be appointed as the surrogate parent. If the youth court fails to act within 20 days, the individual nominated is the surrogate parent for the child.

(4) The superintendent of public instruction shall adopt rules for a procedure to terminate the appointment of a surrogate parent when:

- (a) a child's parents are identified;
- (b) the location of the parents is discovered;
- (c) the child is no longer a ward of the state; or
- (d) the surrogate parent wishes to discontinue the appointment.

History: En. Sec. 5, Ch. 618, L. 1985; amd. Sec. 7, Ch. 249, L. 1991; amd. Sec. 5, Ch. 356, L. 1993; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 1, Ch. 16, L. 2003; amd. Sec. 8, Ch. 255, L. 2005.

Cross-References

Montana Youth Court Act, Title 41, ch. 5.

20-7-462. Responsibilities of surrogate parent. A person assigned as a surrogate parent shall represent the child with a disability in all decisionmaking processes concerning the child's education by:

(1) becoming thoroughly acquainted with the child's history and other information contained in school and other pertinent files, records, and reports relating to that child's educational needs;

(2) complying with state and federal law as to the confidentiality of all records and information to which he is privy pertaining to that child and using discretion in the necessary sharing of the information with appropriate people for the purpose of furthering the interests of the child;

(3) becoming familiar with the educational evaluation and placement for the child and by giving his approval or disapproval for the evaluation and placement and reviewing and evaluating special education programs pertaining to the child and such other programs as may be available; and

(4) initiating any mediation, hearing, or appeal procedures necessary and seeking qualified legal assistance whenever such assistance is in the best interest of the child.

History: En. Sec. 6, Ch. 618, L. 1985; amd. Sec. 10, Ch. 249, L. 1991; amd. Sec. 99(4), Ch. 51, L. 1999.

20-7-463. Surrogate parent — immunity from liability — reimbursement. (1) A person appointed as a surrogate parent is exempt from liability for any act or omission performed by him in his capacity as a surrogate parent except an act or omission which is found to have been committed in a grossly negligent or malicious manner.

(2) A surrogate parent has the same protection and immunity in professional communications as a teacher.

(3) A surrogate parent must be reimbursed by the school district for all reasonable and necessary expenses incurred in the pursuit of his duties, as prescribed by rules adopted by the superintendent of public instruction.

History: En. Sec. 7, Ch. 618, L. 1985.

20-7-464 through 20-7-469 reserved.

20-7-470. Blind persons' literacy rights and education — short title. Sections 20-7-470 through 20-7-475 may be cited as the "Blind Persons' Literacy Rights and Education Act".

History: En. Sec. 1, Ch. 490, L. 2005.

20-7-471. Blind persons' literacy rights and education — definitions. As used in 20-7-470 through 20-7-475, unless the context requires otherwise, the following definitions apply:

(1) "Blind or visually impaired child" means an individual who is eligible for special education services and who:

(a) has a visual acuity of 20/70 or less in the better eye with correcting lenses or has a limited field of vision such that the widest diameter subtends an angular distance of no greater than 20 degrees; or

(b) has a medically indicated expectation of visual deterioration that would qualify the child as having a visual acuity as described in subsection (1)(a).

(2) "Braille" means the system of reading and writing through touch, commonly known as standard English Braille.

(3) "Individualized education program" means a written statement developed for a student eligible for special education services pursuant to the Individuals With Disabilities Education Act, 20 U.S.C. 1401(11).

History: En. Sec. 2, Ch. 490, L. 2005.

20-7-472. Individualized education program for child with blindness. The individualized education program for each blind or visually impaired child must be provided in accordance with the requirements of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

History: En. Sec. 3, Ch. 490, L. 2005.

20-7-473. Standards of competency and instruction — Braille reading and writing. Instruction in Braille reading and writing must be provided in accordance with the requirements of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

History: En. Sec. 4, Ch. 490, L. 2005.

20-7-474. Instructional materials and Braille equipment — Braille equipment loan program. The Montana school for the deaf and blind shall establish a Braille electronic equipment loan program that may be used by a school district to provide Braille equipment as specified in a student's individualized education program. The equipment must be loaned on a temporary basis to a school district, but the district is responsible for purchasing like equipment required by the student's individualized education program.

History: En. Sec. 5, Ch. 490, L. 2005.

20-7-475. Blind persons' literacy rights and education — personnel training. The board of public education shall establish standards to ensure that individuals who provide Braille instruction are appropriately trained and supervised.

History: En. Sec. 6, Ch. 490, L. 2005.

Part 5 Traffic Education

Part Cross-References

National defense highway plans and drivers' training, 10-3-107.

Highway traffic safety administration, 61-2-103.

Licensure of persons 15 years of age upon completion of driver's education, 61-5-105.

Instruction and traffic education permits and temporary licenses, 61-5-106.

Traffic regulation, Title 61, ch. 8.

Violation of safety patrol signals, 61-8-502.

20-7-501. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Teacher of traffic education" means an instructor approved by the superintendent of public instruction to teach traffic education.

(2) “Traffic education” means instruction in motor vehicle, bicycle, pedestrian, and school bus traffic laws or motorcycle laws, in the acceptance of personal responsibility on the public highways, in the causes and consequences of traffic accidents, and in the skills necessary for the safe operation of bicycles and motor vehicles or motorcycles. The instruction must be designed to improve public awareness of motor vehicle, pedestrian, and school bus safety with regard to protecting school-age children.

(3) “Traffic education account” means the state treasury account in the state special revenue fund for the deposit and disbursement of state traffic education revenue.

(4) “Traffic education course” means a course of traffic education that has been approved by the superintendent of public instruction.

History: En. 75-7901 by Sec. 435, Ch. 5, L. 1971; R.C.M. 1947, 75-7901; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 428, L. 1991; amd. Sec. 4, Ch. 701, L. 1991; amd. Sec. 3, Ch. 181, L. 1999.

20-7-502. Duties of superintendent of public instruction. The superintendent of public instruction shall:

- (1) develop, administer, and supervise a program of instruction in traffic education;
- (2) establish basic course requirements in instruction for traffic education;
- (3) establish the qualifications for a teacher of traffic education;
- (4) approve teachers of traffic education when the teachers are qualified;
- (5) establish criteria for traffic education course approval based on the basic course requirements, teacher of traffic education qualifications, and the requirements of law;
- (6) approve traffic education courses when the courses meet the criteria for approval;
- (7) promulgate a policy for the distribution of the traffic education money to approved traffic education courses and annually order the distribution of the proceeds of the traffic education account in the manner required by law;
- (8) assist districts with the conduct of traffic education; and
- (9) periodically conduct onsite driver education program reviews.

History: En. 75-7904 by Sec. 438, Ch. 5, L. 1971; R.C.M. 1947, 75-7904; amd. Sec. 5, Ch. 701, L. 1991; amd. Sec. 4, Ch. 181, L. 1999.

20-7-503. District establishment of traffic education program. The trustees of any district operating a junior high school or high school may establish and maintain a traffic education course. The traffic education course shall be:

- (1) for students who are 15 years old or older or will have reached their 15th birthday within 6 months of the course completion;
- (2) taught by a teacher of traffic education;
- (3) conducted in accordance with the basic course requirements established by the superintendent of public instruction; and
- (4) taught during regular school hours, after regular school hours, on Saturdays, or as a summer school course, at the option of the trustees.

History: En. 75-7905 by Sec. 439, Ch. 5, L. 1971; R.C.M. 1947, 75-7905.

20-7-504. State traffic education account — proceeds earmarked for account — transmittal. (1) There is a traffic education account in the treasury of the state of Montana.

(2) When a county is required to transmit fees directly to the department of revenue, the gross proceeds, including the portion of the fees to be credited to the traffic education account, must be transmitted to the department of revenue and the appropriate portion must be deposited in the traffic education account.

History: En. 75-7902 by Sec. 436, Ch. 5, L. 1971; R.C.M. 1947, 75-7902; amd. Sec. 96, Ch. 421, L. 1979; amd. Sec. 1, Ch. 487, L. 1981; amd. Sec. 7, Ch. 277, L. 1985; amd. Sec. 13, Ch. 557, L. 1987; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 6, Ch. 701, L. 1991; amd. Sec. 2, Ch. 11, Sp. L. July 1992; amd. Sec. 3, Ch. 39, Sp. L. November 1993; amd. Sec. 29, Ch. 509, L. 1995; amd. Sec. 111, Ch. 42, L. 1997; amd. Sec. 5, Ch. 181, L. 1999; amd. Sec. 10, Ch. 237, L. 2001; amd. Sec. 47, Ch. 257, L. 2001.

Cross-References

Instruction permits — traffic education learner licenses and permits — temporary licenses, 61-5-106.

Fees for licenses, 61-5-111, 61-5-114.

Penalties for violation of traffic laws, Title 61, ch. 8, part 7.

Disposition of fines and forfeitures, 61-12-701.

20-7-505. Repealed. Sec. 315, Ch. 42, L. 1997.

History: En. 75-7903 by Sec. 437, Ch. 5, L. 1971; R.C.M. 1947, 75-7903; amd. Sec. 2, Ch. 487, L. 1981; amd. Sec. 14, Ch. 557, L. 1987.

20-7-506. Annual allocation and distribution of traffic education account proceeds. (1) Subject to the provisions of subsection (2), the superintendent of public instruction shall annually order the distribution of all money in the traffic education account to the districts conducting approved traffic education courses. The distribution of the traffic education money must be based on the distribution policy promulgated by the superintendent of public instruction, provided that the reimbursements to districts must be based upon the number of pupils who, in a given school fiscal year, complete an approved traffic education course, including both the classroom instruction and behind-the-wheel driving.

(2) Before the funds in the traffic education account are disbursed, there must be appropriated to the superintendent of public instruction funds to administer the statewide traffic education program for eligible, young, novice drivers. The administration may include:

- (a) supervision and assessment of approved traffic education courses;
- (b) preparation for teachers of traffic education;
- (c) development, printing, and distribution of essential instructional materials for traffic education; and

(d) any other activities considered necessary by the superintendent of public instruction, provided that the money is available only to support traffic education for young, novice drivers.

History: En. 75-7906 by Sec. 440, Ch. 5, L. 1971; amd. Sec. 1, Ch. 307, L. 1973; R.C.M. 1947, 75-7906; amd. Sec. 4, Ch. 39, Sp. L. November 1993; amd. Sec. 30, Ch. 509, L. 1995.

20-7-507. District traffic education fund. The trustees of any district maintaining a traffic education course shall establish a special nonbudgeted fund with the county treasurer for traffic education. All nontax receipts for traffic education must be deposited in the district's traffic education fund. The expenditure of the money deposited in the district's traffic education fund is not subject to the budgeting provisions of this title, and the money may be expended for traffic education.

History: En. 75-7907 by Sec. 441, Ch. 5, L. 1971; R.C.M. 1947, 75-7907; amd. Sec. 5, Ch. 39, Sp. L. November 1993.

Cross-References

Traffic education fund, 20-9-510.

20-7-508 and 20-7-509 reserved.

20-7-510. Renumbered 20-25-1003. Sec. 14(2), Ch. 181, L. 1999.

20-7-511. Renumbered 20-25-1004. Sec. 14(2), Ch. 181, L. 1999.

20-7-512. Renumbered 20-25-1005. Sec. 14(2), Ch. 181, L. 1999.

20-7-513. Renumbered 20-25-1006. Sec. 14(2), Ch. 181, L. 1999.

20-7-514. Renumbered 20-25-1007. Sec. 14(2), Ch. 181, L. 1999.

Part 6 Textbook Regulation

Part Cross-References

Proscribed acts relating to contracts and claims, Title 2, ch. 2, part 2.

Textbook and textbook dealer defined, 20-1-101.

Conflict of interest, 20-1-205.

School property, Title 20, ch. 6, part 6.

Conflicts of interests, letting contracts, and calling for bids, 20-9-204.

20-7-601. Free textbook provisions. (1) The trustees of each district shall provide free textbooks to the public school pupils of the district. The trustees shall purchase such textbooks at the expense of the district and loan them to such pupils free of charge, subject to the textbook damage policy of the trustees.

(2) For the purpose of this section only, textbooks shall not include those books or manuals which are rendered unusable as a result of having pages designed to be written upon or removed during the course of the study they serve. When the parents of a pupil attending a school of the district so request, such textbooks shall be sold to them at cost.

History: En. 75-7602 by Sec. 394, Ch. 5, L. 1971; R.C.M. 1947, 75-7602.

Cross-References

Free education to be provided, Art. X, sec. 1, Mont. Const.

20-7-602. Textbook selection and adoption. (1) Textbooks must be selected by the district superintendent or by the school principal if there is no district superintendent. The selections are subject to the approval of the trustees. In districts not employing a district superintendent or principal, the trustees shall select and adopt the textbooks on the basis of recommendations of the county superintendent.

(2) In selecting textbooks, the district shall ensure that the materials are made available to each blind or visually impaired child in a timely manner in accordance with the requirements of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

History: En. 75-7603 by Sec. 395, Ch. 5, L. 1971; R.C.M. 1947, 75-7603; amd. Sec. 7, Ch. 490, L. 2005.

Cross-References

Blind Persons' Literacy Rights and Education Act, 20-7-470 through 20-7-475.

20-7-603. Textbooks obtained from licensed textbook dealer. Textbooks selected and adopted by districts shall be obtained from a licensed textbook dealer.

History: En. 75-7604 by Sec. 396, Ch. 5, L. 1971; amd. Sec. 1, Ch. 89, L. 1973; R.C.M. 1947, 75-7604.

Cross-References

School officers not to act as agents, 20-1-201.

20-7-604. Licensing textbook dealers. (1) Textbook dealers must be licensed to sell textbooks by the superintendent of public instruction. To obtain a license, a textbook dealer shall first file with the superintendent of public instruction the dealer's written agreement to:

(a) guarantee that textbooks must be supplied to any district at the listed, uniform sales prices in effect for schools, except that the prices may be reduced in accordance with this section;

(b) guarantee that at no time will any textbook sale price in Montana be a larger amount than the sale price to schools anywhere else in the United States under similar conditions of transportation and marketing; and

(c) reduce automatically the listed, uniform sales price to schools whenever reductions of these prices are made anywhere in the United States.

(2) Textbook dealers filing the written agreement with the superintendent of public instruction shall also file a surety bond with the secretary of state. The surety bond must run to the state of Montana and be conditioned on the faithful performance of all duties imposed upon textbook dealers for the purpose of regulating the supply of textbooks to districts. The amount of the surety bond must be set by the superintendent of public instruction and may not be less than \$2,000 or more than \$10,000. It is the responsibility of the textbook dealer to maintain the surety bond on a current basis.

(3) When the textbook dealer has complied with the written agreement and surety bond requirements for licensing, the superintendent of public instruction shall issue a license to the textbook dealer.

History: En. 75-7605 by Sec. 397, Ch. 5, L. 1971; amd. Sec. 2, Ch. 89, L. 1973; R.C.M. 1947, 75-7605; amd. Sec. 7, Ch. 94, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 94 in (2) deleted former fourth sentence that read: "The bond shall be approved by the attorney general"; and made minor changes in style. Amendment effective October 1, 2007.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

20-7-605. Notification and processing of complaint against licensed textbook dealer. (1) A district or county superintendent shall notify the superintendent of public instruction whenever it is ascertained that a licensed textbook dealer is:

(a) offering to sell textbooks at a higher price than the listed uniform sales price filed with the superintendent of public instruction;

(b) offering to sell textbooks at a higher shipping point price than the shipping point price of the same textbooks distributed elsewhere in the United States; or

(c) in any other way performing contrary to the laws regulating the offering of textbooks for sale or adoption to districts.

(2) Upon receipt of such notification from the district or county superintendent, the superintendent of public instruction shall notify the appropriate licensed textbook dealer of the

complaint. If the superintendent of public instruction finds that the licensed textbook dealer has violated any provision of this section and the dealer fails to rectify the error within 30 days of the notification of the finding of a violation, the dealer shall forfeit the dealer's surety bond. The attorney general, upon written request of the superintendent of public instruction, shall proceed to collect by legal action the full amount of the surety bond. Any amount recovered must be paid into the state general fund.

History: En. 75-7607 by Sec. 399, Ch. 5, L. 1971; amd. Sec. 3, Ch. 89, L. 1973; amd. Sec. 25, Ch. 266, L. 1977; R.C.M. 1947, 75-7607; amd. Sec. 31, Ch. 509, L. 1995.

20-7-606. Doing business without textbook dealer's license — penalty. Any textbook dealer who shall sell or offer for sale or adoption a textbook to any district or county superintendent without first obtaining a textbook license from the superintendent of public instruction shall be guilty of a misdemeanor. Upon conviction of such misdemeanor, he shall be fined not less than \$500 or more than \$2,000.

History: En. 75-7608 by Sec. 400, Ch. 5, L. 1971; R.C.M. 1947, 75-7608.

20-7-607. Restricting competition — penalty. At any time a licensed textbook dealer enters into any understanding, agreement, or combination to control textbook prices or otherwise restrict competition in the sale of textbooks, he shall forfeit his surety bond and textbook dealer's license. The attorney general shall institute and prosecute legal proceedings for the forfeiture of the surety bond of such licensed textbook dealer and for revocation of his textbook dealer's license.

History: En. 75-7609 by Sec. 401, Ch. 5, L. 1971; R.C.M. 1947, 75-7609.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

20-7-608. Offer or acceptance of emoluments or other inducements — penalty. (1) No textbook dealer or his agent shall offer any emolument or other inducement to any trustee or school employee to influence the selection, adoption, or purchase of textbooks.

(2) No trustee, county superintendent, or school employee shall accept any emolument or other inducement from a textbook dealer or agent of such dealer for the use of his influence in the selection, adoption, or purchase of textbooks.

(3) The violation of any provisions of this section shall constitute a misdemeanor. In addition, any trustee, county superintendent, or school employee convicted of such misdemeanor shall be removed from his position.

(4) Nothing in this section shall be construed to prevent the supplying of a necessary number of sample textbooks for the purpose of examination by school officials or school employees.

History: En. 75-7610 by Sec. 402, Ch. 5, L. 1971; R.C.M. 1947, 75-7610.

Cross-References

Trustee removal, 20-3-310.

Personal immunity and liability of trustees, 20-3-332.

Official misconduct, 45-7-401.

Misdemeanor — no penalty specified, 46-18-212.

Part 7 Adult Education

Part Cross-References

High school equivalency — certification, 20-7-131.

20-7-701. Definition of adult basic education and adult education. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Adult basic education" means instruction in basic skills, such as reading, writing, arithmetic, and other skills required to function in society, offered to persons 16 years of age or older who are not regularly enrolled, full-time pupils for the purposes of ANB computation. Adult basic education may include any subject normally offered in the basic curricula of an accredited elementary or secondary school in the state.

(2) "Adult education" means the instruction of persons 16 years of age or older who are not regularly enrolled, full-time pupils for the purposes of ANB computation.

History: En. 75-7512 by Sec. 383, Ch. 5, L. 1971; amd. Sec. 2, Ch. 290, L. 1977; R.C.M. 1947, 75-7512; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 13, Ch. 308, L. 1995.

Cross-References

ANB defined, 20-1-101.

Calculation of average number belonging (ANB), 20-9-311.

20-7-702. Authorization to establish adult education program. The trustees of a district or community college district may establish and operate an adult education program at any time of the day when facilities and personnel are available. An adult education program may provide both basic and secondary general education, K-12 career and vocational/technical education, vocational-technical education, American citizenship education, including courses in the English language and American history and government, or any other areas of instruction approved by the trustees.

History: En. 75-7513 by Sec. 384, Ch. 5, L. 1971; R.C.M. 1947, 75-7513; amd. Sec. 12, Ch. 133, L. 2001.

20-7-703. Trustees' policies for adult education. The trustees shall adopt such policies as are necessary for the supervision and administration of adult education when a program is established in the district.

History: En. 75-7514 by Sec. 385, Ch. 5, L. 1971; R.C.M. 1947, 75-7514.

20-7-704. Adult education tuition and fees. The trustees of a district or community college district shall have the authority to charge tuition for instruction and to charge fees for the use of equipment and materials. The amount of such tuition and fees shall be determined on a per-course basis or on the basis of the cost of the entire adult education program. All proceeds from tuition and fees shall be deposited in the adult education fund.

History: En. 75-7516 by Sec. 387, Ch. 5, L. 1971; R.C.M. 1947, 75-7516.

20-7-705. Adult education fund. (1) A separate adult education fund must be established when an adult education program is operated by a district or community college district. The financial administration of the fund must comply with the budgeting, financing, and expenditure provisions of the laws governing the schools.

(2) Whenever the trustees of a district establish an adult education program under the provisions of 20-7-702, they shall establish an adult education fund under the provisions of this section. The adult education fund is the depository for all district money received by the district in support of the adult education program. Federal and state adult education program money must be deposited in the miscellaneous programs fund.

(3) The trustees of a district may authorize the levy of a tax on the taxable value of all taxable property within the district for the operation of an adult education program.

(4) Whenever the trustees of a district decide to offer an adult education program during the ensuing school fiscal year, they shall budget for the cost of the program in the adult education fund of the final budget. Any expenditures in support of the adult education program under the final adult education budget must be made in accordance with the financial administration provisions of this title for a budgeted fund.

(5) When a tax levy for an adult education program is included as a revenue item on the final adult education budget, the county superintendent shall report the levy requirement to the county commissioners on the fourth Monday of August and a levy on the district must be made by the county commissioners in accordance with 20-9-142.

History: En. Secs. 346, 386, Ch. 5, L. 1971; R.C.M. 1947, 75-7207, 75-7515; amd. Sec. 1, Ch. 215, L. 1981; amd. Sec. 9, Ch. 555, L. 1991; amd. Sec. 5, Ch. 568, L. 1991; amd. Sec. 5, Ch. 133, L. 1993; amd. Sec. 1, Ch. 34, Sp. L. November 1993; amd. Sec. 1, Ch. 38, L. 1995; amd. Sec. 2, Ch. 211, L. 1997; amd. Sec. 6, Ch. 430, L. 1997; amd. Sec. 103, Ch. 584, L. 1999; amd. Sec. 3, Ch. 220, L. 2001; amd. Sec. 115, Ch. 574, L. 2001.

Cross-References

School budgets, Title 20, ch. 9, part 1.

Administration of finances, Title 20, ch. 9, part 2.

20-7-706 through 20-7-710 reserved.

20-7-711. State policy for adult basic education. Affirming that reading, writing, and other basic educational skills are vital for all citizens in modern society, the legislature declares that it is the continuing policy of Montana to encourage adult basic education programs that will develop the full educational potential of each citizen. The legislature recognizes that funds from local, state, and federal sources may be necessary to provide the basic education needed by Montana citizens.

History: En. 75-7514.1 by Sec. 1, Ch. 290, L. 1977; R.C.M. 1947, 75-7514.1.

20-7-712. Adult basic education fund and its distribution. (1) To encourage adult basic education, the legislature may appropriate funds to the superintendent of public instruction for the support of adult basic education programs in any school, community college district, or accredited tribal college located in Montana.

(2) The superintendent of public instruction shall direct the distribution of funds appropriated by the legislature for adult basic education. The trustees of any district or tribal college may apply to the superintendent for funds for its adult basic education courses. The financial administration and accounting of adult basic education funds must be the same as that of adult education.

History: En. 75-7515.1 by Sec. 3, Ch. 290, L. 1977; R.C.M. 1947, 75-7515.1; amd. Sec. 1, Ch. 148, L. 2001.

Cross-References

School budgets, Title 20, ch. 9, part 1.

Administration of finances, Title 20, ch. 9, part 2.

20-7-713. Adult education fund operating reserve. At the end of each school fiscal year, the trustees of a school district that operates an adult education program may designate the portion of the adult education end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying, whenever a cash flow shortage occurs, adult education fund warrants issued by the district from July 1 through June 30 of the ensuing school fiscal year. The amount of the adult education fund balance that is earmarked as operating reserve may not exceed 35% of the final adult education fund budget for the ensuing school fiscal year.

History: En. Sec. 1, Ch. 120, L. 1981; amd. Sec. 6, Ch. 568, L. 1991; amd. Sec. 6, Ch. 767, L. 1991.

Cross-References

School fiscal year, 20-1-301.

20-7-714. County adult literacy programs — authorization to levy tax and establish fund. (1) (a) Subject to 15-10-420, the governing body of a county may, in its discretion, establish a fund and levy a tax on the taxable value of all taxable property in the county for the support of county literacy programs that give first priority to providing direct instruction to adults. The tax levy is in addition to all other tax levies and is subject to limitations on property taxes set forth in 15-10-402.

(b) The fund may be used only for the support of adult literacy programs within the county.

(2) (a) If a county levies a property tax for adult literacy programs, the county governing body shall appoint a county adult literacy board to administer the expenditure of funds from the county adult literacy fund established in subsection (1).

(b) The county adult literacy board shall coordinate all adult literacy programs receiving county adult literacy funds. The board may adopt policies concerning program standards and financial accountability for organizations receiving adult literacy funds. The board may require that adult literacy programs match adult literacy funds with federal, state, or private money. The board may, with the concurrence of the appropriate county officials, arrange for county in-kind services to support adult literacy programs.

(c) County adult literacy funding may be expended only on literacy programs for persons who are 16 years of age or older and who are not regularly enrolled, full-time pupils for the purposes of ANB computation.

History: En. Sec. 1, Ch. 792, L. 1991; amd. Sec. 1, Ch. 264, L. 1997; amd. Sec. 104, Ch. 584, L. 1999; amd. Sec. 116, Ch. 574, L. 2001.

Part 8 Public Recreation

Part Cross-References

Culture, social services, and recreation, Title 7, ch. 16.

Recreation, Title 23, ch. 2.

Footpaths and bicycle trails, Title 60, ch. 3, part 3.

20-7-801. Public recreation program authorized. (1) Any city or town, including any board of park commissioners, may expend funds from the band fund and the park fund of the city or town for the purpose of operating a program of public recreation and playgrounds and for this purpose may acquire, equip, and maintain land, buildings, and other recreation facilities.

(2) Any school district may cooperate in such program.

History: En. Sec. 1, Ch. 71, L. 1939; R.C.M. 1947, 62-211; amd. Sec. 4, Ch. 384, L. 1979.

Cross-References

Interlocal Cooperation Act, Title 7, ch. 11, part 1.
Use of park funds for public recreation, 7-16-4107.

20-7-802. How program operated — independently or cooperatively — delegation. Any city, town, school district, or any board thereof, including a board of park commissioners, may:

- (1) (a) operate such a program independently; or
- (b) cooperate in its operation and conduct with any other body authorized hereby to conduct such a program and in any manner upon which they may mutually agree; or
- (2) delegate the operation of the program to a board of recreation created by any city, town, school district, or any board thereof, including any board of park commissioners, operating or proposing to operate a program independently or with any cooperating bodies in such manner as they may agree, and all moneys appropriated for the purposes of such program may be expended by such board.

History: En. Sec. 2, Ch. 71, L. 1939; R.C.M. 1947, 62-212.

Cross-References

Interlocal Cooperation Act, Title 7, ch. 11, part 1.

20-7-803. Authority to accept gifts. Any corporation, board, or body hereinbefore designated, given authority to operate and conduct a recreation program or given charge of such program, is authorized to accept gifts and bequests in the name or names of the sponsors of said program, as said sponsors may agree, for the benefit of said recreational work, to employ directors and instructors of said recreational work, and to conduct its activities on:

- (1) property under its custody and management;
- (2) other public property under the custody of any other public corporation, body, or board, with the consent of such corporation, body, or board; and
- (3) private property, with the consent of its owners.

History: En. Sec. 3, Ch. 71, L. 1939; R.C.M. 1947, 62-213.

20-7-804. Authority of board of public education. In all cases where school property is utilized, the board of public education shall have authority:

- (1) to establish minimum qualifications of local recreational directors and instructors; and
- (2) to prepare or cause to be prepared, published, and distributed adequate and appropriate manuals and other materials as it may deem necessary or suitable to carry on said recreational program and to carry out the provisions of this part.

History: En. Sec. 4, Ch. 71, L. 1939; R.C.M. 1947, 62-214.

20-7-805. Recreational use of school facilities secondary. The facilities of any school district operating a recreational program pursuant to the provisions of this part shall be used primarily for the purpose of conducting a regular school curriculum, and the use of school facilities for recreational purposes authorized by this part shall be secondary.

History: En. Sec. 5, Ch. 71, L. 1939; R.C.M. 1947, 62-215.

Part 9 Gifted and Talented Children

Part Cross-References

Board of Public Education — policies on gifted and talented children, 20-2-121.

20-7-901. Definitions. As used in this part the following definitions apply:

(1) “Gifted and talented children” means children of outstanding abilities who are capable of high performance and require differentiated educational programs beyond those normally offered in public schools in order to fully achieve their potential contribution to self and society. The children so identified include those with demonstrated achievement or potential ability in a variety of worthwhile human endeavors.

(2) “Professionally qualified persons” means teachers, administrators, school psychologists, counselors, curriculum specialists, artists, musicians, and others with special training who are qualified to appraise pupils’ special competencies.

History: En Sec. 1, Ch. 310, L. 1979.

20-7-902. School district programs to identify and serve the gifted and talented child. (1) A school district may identify gifted and talented children and devise programs to serve them.

(2) In identifying gifted and talented children, the school district shall:

(a) consult with professionally qualified persons and the parents of children being evaluated;

(b) consider a child's demonstrated or potential gifts or talents; and

(c) use comprehensive and appropriate assessment methods including objective measures and professional assessment measures.

History: En Sec. 2, Ch. 310, L. 1979.

20-7-903. Programs to serve gifted and talented children — compliance with board policy — funding. (1) The conduct of programs to serve gifted and talented children must comply with the policies recommended by the superintendent of public instruction and adopted by the board of public education.

(2) Proposals approved by the superintendent of public instruction in accordance with policies of the board of public education must be funded by money appropriated to the superintendent for that purpose.

(3) A school district shall match funds provided by the superintendent for a gifted and talented children's program with equal funds from other sources. "In kind" contributions may not be used to constitute such a match. Funds must be administered by the school district as provided in 20-9-507.

(4) The superintendent of public instruction may deduct reasonable costs of administration from the funds appropriated for the purposes of this part.

History: En Sec. 3, Ch. 310, L. 1979; amd. Sec. 2, Ch. 312, L. 1983.

20-7-904. Review and recommendations of proposals. (1) The policies of the board of public education must assure that program proposals submitted by school districts to the superintendent of public instruction contain:

(a) evidence that identification procedures are comprehensive and appropriate;

(b) a program description including stated needs and measurable objectives designed to meet those needs;

(c) evidence that the activities are appropriate and will serve to achieve the program objectives; and

(d) a method to evaluate the effectiveness of the program.

(2) School districts may request assistance from the staff of the superintendent in formulating program proposals.

(3) The superintendent of public instruction shall supervise and coordinate the programs for gifted and talented children by:

(a) recommending to the board of public education the adoption of those policies necessary to establish a planned and coordinated program; and

(b) establishing a procedure for review and approval of program proposals.

History: En Sec. 4, Ch. 310, L. 1979; amd. Sec. 3, Ch. 312, L. 1983.

Part 10 Distance Learning (Repealed)

20-7-1001. Repealed. Sec. 8, Ch. 622, L. 1991.

History: En. Sec. 52, Ch. 11, Sp. L. June 1989.

Part 11 Earthquake Emergency Procedures (Repealed)

20-7-1101. Repealed. Sec. 5, Ch. 423, L. 1997.

History: En. Sec. 1, Ch. 534, L. 1991.

CHAPTER 8 MONTANA SCHOOL FOR THE DEAF AND BLIND

Part 1 — General Provisions

- 20-8-101. Montana school for deaf and blind — state-supported special school.
- 20-8-102. Objects and purposes — assistance to programs — tracking sensory impaired children — fee.
- 20-8-103. Board of public education rules.
- 20-8-104. Eligibility of children for admittance.
- 20-8-105. Repealed.
- 20-8-106. Duration of attendance at school — suspension or expulsion — transfer.
- 20-8-107. Admission of nonresident children and advance payment of cost — Indian children.
- 20-8-108. Provisions for indigent students.
- 20-8-109. Time of regular school term.
- 20-8-110. Property vested in school.
- 20-8-111. Duty of board of public education as to property of school.
- 20-8-112. Expenditure of school moneys.
- 20-8-113. Duties of superintendent of school for the deaf and blind.
- 20-8-114. Repealed.
- 20-8-115. Repealed.
- 20-8-116. Employment placement — continuing education.
- 20-8-117. Repealed.
- 20-8-118. Repealed.
- 20-8-119. Repealed.
- 20-8-120. Communications skills required of certain employees.
- 20-8-121. Transportation of students at school.

Chapter Cross-References

- Application of statewide classification and pay plan to school employees, 2-18-103.
- Attendance of pupils at schools, Title 20, ch. 5, part 1.
- No tuition when attending state institution, 20-7-424.
- Rights of persons with disabilities, Title 49, ch. 4.
- Developmental disabilities, Title 53, ch. 20.

Part 1 General Provisions

20-8-101. Montana school for deaf and blind — state-supported special school. The school for the deaf and blind, located in the city of Great Falls, is known and designated as the Montana school for the deaf and blind and must be conducted as a separate and independent unit and special school of the state of Montana under the general supervision, direction, and control of the board of public education. However, the transfer of that school or any change in the name of the school or in the objects or purposes of the school may not be considered or construed to impair or work any forfeiture or alteration of any rights, grants, or property made to or acquired by that school or by the state for the use and benefit of that school.

History: En. Sec. 1, Ch. 182, L. 1943; amd. Sec. 39, Ch. 266, L. 1977; R.C.M. 1947, 80-102; amd. Sec. 1, Ch. 151, L. 1983; amd. Sec. 1, Ch. 72, L. 2003.

Cross-References

- Board of Public Education, 20-2-121.

20-8-102. Objects and purposes — assistance to programs — tracking sensory impaired children — fee. (1) The Montana school for the deaf and blind is a residential and day school for children and adolescents who are deaf or blind or whose hearing or sight is so defective that they cannot be successfully taught and are unable to receive a sufficient or proper education in the public schools of the state.

(2) The school shall serve as a consultative resource for parents of hearing impaired and visually impaired children not yet enrolled in an educational program and for public schools of the state where hearing impaired or visually impaired children are enrolled. The school upon request shall ensure that services and programs for hearing impaired or visually impaired children are appropriate and sufficient. The school may provide assistance to the programs that the school determines is needed. The school may collect a reasonable fee for the assistance from the public school or other responsible agency receiving the assistance.

(3) The school shall establish a system for tracking a child identified as hearing impaired or visually impaired from the time of impairment identification through the child's exit from intervention or educational services.

(4) The object and purpose of the school are to furnish and provide, by the use of specialized methods and systems, an education for the hearing impaired and visually impaired children of this state that is commensurate with the education provided to nonhandicapped children in the public schools and that will enable children being served by the school to become independent and self-sustaining citizens.

History: En. Sec. 2, Ch. 182, L. 1943; re-en. Sec. 1, Ch. 169, L. 1949; R.C.M. 1947, 80-103; amd. Sec. 2, Ch. 151, L. 1983; amd. Sec. 1, Ch. 392, L. 1989; amd. Sec. 1, Ch. 537, L. 1993; amd. Sec. 1, Ch. 73, L. 2003; amd. Sec. 1, Ch. 74, L. 2003.

20-8-103. Board of public education rules. The board of public education shall adopt and prescribe rules as the board considers necessary and proper for the maintenance and government of the school, the admission of children in conformity with the provisions of this chapter, and the qualifications and compensation of the superintendent and teaching staff of the school, provided that the superintendent must have a ready and working knowledge of the sign language.

History: En. Sec. 3, Ch. 182, L. 1943; R.C.M. 1947, 80-104; amd. Sec. 2, Ch. 392, L. 1989.

20-8-104. Eligibility of children for admittance. In order to be eligible for services from the Montana school for the deaf and blind, a child may not yet have reached 22 years of age and must be identified as deaf, hearing impaired, or visually impaired pursuant to the Individuals With Disabilities Education Act, 20 U.S.C. 1414.

History: En. Sec. 4, Ch. 182, L. 1943; amd. Sec. 1, Ch. 282, L. 1967; R.C.M. 1947, 80-105; amd. Sec. 3, Ch. 151, L. 1983; amd. Sec. 1, Ch. 291, L. 1995; amd. Sec. 1, Ch. 41, L. 2005.

20-8-105. Repealed. Sec. 6, Ch. 291, L. 1995.

History: En. Sec. 5, Ch. 182, L. 1943; R.C.M. 1947, 80-106; amd. Sec. 4, Ch. 151, L. 1983.

20-8-106. Duration of attendance at school — suspension or expulsion — transfer.

(1) Each child admitted to the school is entitled to attend the school until reaching the age of 21 years if attendance at the Montana school for the deaf and blind is the most appropriate educational placement for the child.

(2) Nothing in this section may be construed to prevent the suspension or expulsion of a child at any time for insubordination or other cause considered good and sufficient by the board of public education and superintendent of the Montana school for the deaf and blind if the suspension or expulsion complies with other applicable state and federal law.

(3) Transfer of a student from the school to another educational placement must comply with rules adopted by the board of public education.

History: En. Sec. 6, Ch. 182, L. 1943; amd. Sec. 2, Ch. 282, L. 1967; R.C.M. 1947, 80-107; amd. Sec. 5, Ch. 151, L. 1983; amd. Sec. 2, Ch. 291, L. 1995.

20-8-107. Admission of nonresident children and advance payment of cost — Indian children. (1) Hearing impaired or visually impaired children who are not residents of the state of Montana may be admitted to the Montana school for the deaf and blind after proper application for admission, subject to all eligibility requirements prescribed for children who are residents of the state if:

(a) the school is paid in advance a sum of money for each child equal to an estimate of the whole per capita cost of maintaining the school during the year immediately preceding the date of the application; and

(b) the full capacity of the school is not required for children who are residents of the state.

(2) The Montana school for the deaf and blind is authorized to negotiate with an out-of-state educational institution to place a student at the school. If a group of out-of-state students attends the Montana school for the deaf and blind, the educational institution of the other state shall pay in advance to the Montana school for the deaf and blind an amount of money for each student determined as a result of a negotiated agreement between the superintendent of the Montana school for the deaf and blind and the out-of-state educational institution. The agreement must be approved by the board of public education.

(3) Indian children who are Montana residents are eligible for admission and must be admitted to the school on the same terms as residents.

(4) The money paid by an out-of-state institution must be deposited in a state special revenue account and is statutorily appropriated, pursuant to 17-7-502, to the Montana school for the deaf and blind for educational purposes.

(5) The provisions of 17-2-108 that require the expenditure of nongeneral fund money prior to the expenditure of general fund money do not apply to the expenditure of revenue made available to the Montana school for the deaf and blind from the negotiated agreements described in subsection (2) of this section and through the statutory appropriation provided for in subsection (4) of this section.

History: En. Sec. 7, Ch. 182, L. 1943; amd. Sec. 1, Ch. 194, L. 1953; amd. Sec. 1, Ch. 182, L. 1957; R.C.M. 1947, 80-108; amd. Sec. 6, Ch. 151, L. 1983; amd. Sec. 3, Ch. 291, L. 1995; amd. Sec. 2, Ch. 151, L. 2005.

Cross-References

Rules for determining residence, 1-1-215.

20-8-108. Provisions for indigent students. In all cases where a person to be sent to said school is too poor to pay for necessary clothing and transportation, the judge of the district court of the district where such person resides, upon application of any relative or friend or of any officer of the county where said person resides, shall, if he deem the person a proper subject, make an order to that effect which shall be certified by the clerk of the court to the superintendent of said school, who shall then provide the necessary clothing and transportation at the expense of the county and, upon his rendering his proper accounts therefor quarter-annually, the county commissioners shall allow and pay the same out of the county treasury.

History: En. Sec. 2344, Pol. C. 1895; re-en. Sec. 1170, Rev. C. 1907; re-en. Sec. 1463, R.C.M. 1921; Cal. Pol. C. Sec. 2240; re-en. Sec. 1463, R.C.M. 1935; R.C.M. 1947, 80-109.

20-8-109. Time of regular school term. The regular term of school shall be as provided in 20-1-301.

History: En. Sec. 9, Ch. 182, L. 1943; R.C.M. 1947, 80-111; amd. Sec. 7, Ch. 151, L. 1983.

20-8-110. Property vested in school. All lands heretofore granted by the government of the United States to the state of Montana for the use and benefit of the deaf and dumb are hereby set apart and declared to be for the use and benefit in perpetuity of the Montana school for the deaf and blind, and all funds arising from the sale or leasing of said lands, or any part or portion thereof, shall be applied to the proper use and benefit thereof and shall vest in the state of Montana for the use and benefit thereof.

History: En. Sec. 11, Ch. 182, L. 1943; R.C.M. 1947, 80-113; amd. Sec. 8, Ch. 151, L. 1983.

20-8-111. Duty of board of public education as to property of school. The board of public education shall, either directly or through a contract with a nonprofit corporation, receive, hold, manage, use, and dispose of real and personal property transferred to the board or to the state of Montana by purchase, gift, devise, or bequest or otherwise acquired and the proceeds, interest, and income of the property for the use and benefit of the school for the deaf and blind. All donations, gifts, devises, or grants vest in the board or its designee, as trustee for the state of Montana, for the use and benefit of the school and its students.

History: En. Sec. 12, Ch. 182, L. 1943; R.C.M. 1947, 80-114; amd. Sec. 9, Ch. 151, L. 1983; amd. Sec. 31, Ch. 703, L. 1985; amd. Sec. 30, Ch. 422, L. 1997.

20-8-112. Expenditure of school moneys. No moneys belonging to the deaf and blind school fund shall be expended for any purpose other than for the Montana school for the deaf and blind, and any moneys belonging to any fund or funds which may be hereafter created for such school shall be expended for the express purpose designated in the act or acts creating such fund or funds and for no other purpose.

History: En. Sec. 14, Ch. 182, L. 1943; R.C.M. 1947, 80-116; amd. Sec. 10, Ch. 151, L. 1983.

20-8-113. Duties of superintendent of school for the deaf and blind. The superintendent of the Montana school for the deaf and blind shall:

(1) administer the programs and functions of the school within the guidelines of statutes and under policies prescribed by the board of public education;

(2) prepare and submit reports, summaries, and other information requested by the board;

(3) establish and pursue professional and technical contacts that will contribute information and guidance toward effective and efficient operation of the school;

(4) maintain effective liaison between the school, the superintendent of public instruction, local school districts, and other public and private agencies that have an interest in or influence upon the school;

(5) pursue a program of information for parents, professionals, and the general public.

History: En. Sec. 1, Ch. 189, L. 1945; R.C.M. 1947, 80-117; amd. Sec. 11, Ch. 151, L. 1983.

20-8-114. Repealed. Sec. 14, Ch. 151, L. 1983.

History: En. Sec. 2, Ch. 189, L. 1945; R.C.M. 1947, 80-118.

20-8-115. Repealed. Sec. 14, Ch. 151, L. 1983.

History: En. Sec. 3, Ch. 189, L. 1945; R.C.M. 1947, 80-119.

20-8-116. Employment placement — continuing education. (1) The superintendent of the Montana school for the deaf and blind or the superintendent's designee shall assist in locating suitable employment for hearing impaired or visually impaired persons in attendance at the school. The superintendent or the superintendent's designee shall:

(a) consult with various county, state, and federal agencies and with the department of public health and human services to secure employment for self-sustaining persons; and

(b) coordinate work with federal programs, such as social security and reemployment for those out of work, as required by this part.

(2) The superintendent or the superintendent's designee, may, within funding limitations, develop and offer continuing education programs of a vocational nature for the hearing impaired and visually impaired who use the campus and facilities of the school during the summer months and other times when the school's facilities are not being used by its students.

History: En. Sec. 4, Ch. 189, L. 1945; R.C.M. 1947, 80-120; amd. Sec. 12, Ch. 151, L. 1983; amd. Sec. 4, Ch. 291, L. 1995; amd. Sec. 71, Ch. 546, L. 1995.

20-8-117. Repealed. Sec. 14, Ch. 151, L. 1983.

History: En. Sec. 5, Ch. 189, L. 1945; R.C.M. 1947, 80-121.

20-8-118. Repealed. Sec. 14, Ch. 151, L. 1983.

History: En. Sec. 6, Ch. 189, L. 1945; R.C.M. 1947, 80-122.

20-8-119. Repealed. Sec. 14, Ch. 151, L. 1983.

History: En. Sec. 7, Ch. 189, L. 1945; R.C.M. 1947, 80-123.

20-8-120. Communications skills required of certain employees. (1) Each permanent employee of the school who works with deaf children or works for or with a fellow employee who is deaf must acquire acceptable total communications skills as prescribed by the board of public education by the end of his first year of employment.

(2) Upon request to the board of public education by the superintendent, an exception to this requirement may be made for an employee not working directly with deaf children.

History: En. Sec. 13, Ch. 151, L. 1983.

20-8-121. Transportation of students at school. (1) The school for the deaf and blind shall provide the transportation expenses allowed in subsection (4) for a residential student at the school for the deaf and blind who is a resident of the state of Montana if the student is conveyed to and from the student's residence by:

(a) a scheduled air carrier as defined in 67-1-101;

(b) charter with a commercial air operator as defined in 67-1-101;

(c) a parent or guardian of the student, under an individual transportation contract with the school for the deaf and blind; or

(d) other transportation arrangements, provided that the transportation is by a carrier of passengers certified by the public service commission and approved by the superintendent of the school for the deaf and blind, pursuant to rules adopted by the board of public education.

(2) The superintendent of the school for the deaf and blind shall determine which method of transportation in subsection (1) is to be provided to a student, pursuant to rules adopted by the board of public education on transportation of residential and boarding students at the school.

(3) A parent or guardian who transports a student to or from the school under an individual transportation contract is entitled to reimbursement for transportation, pursuant to rules adopted by the board of public education on reimbursement.

(4) The transportation of a residential student provided in subsection (1) is limited to the number of round trips to the student's residence as specified in the school calendar approved by the board of public education. The superintendent of the school for the deaf and blind may grant a variance from this provision, but in no event may a reimbursement for travel expenses be provided for travel in excess of the total number of trips approved in any school fiscal year.

History: En. Sec. 1, Ch. 396, L. 1987; amd. Sec. 3, Ch. 392, L. 1989.

CHAPTER 9 FINANCE

Part 1 — School Budgets

- 20-9-101. Application of budget system for districts and counties.
- 20-9-102. General supervision of school budgeting system.
- 20-9-103. School budget form.
- 20-9-104. General fund operating reserve.
- 20-9-105. Repealed.
- 20-9-106 through 20-9-110 reserved.
- 20-9-111. Repealed.
- 20-9-112. Repealed.
- 20-9-113. Repealed.
- 20-9-114. Repealed.
- 20-9-115. Notice of final budget meeting.
- 20-9-116 through 20-9-120 reserved.
- 20-9-121. County treasurer's statement of cash balances and bond information.
- 20-9-122. Statement of district, city, and town valuations.
- 20-9-123. Repealed.
- 20-9-124 through 20-9-129 reserved.
- 20-9-130. District obligation for students in youth detention facility.
- 20-9-131. Final budget meeting.
- 20-9-132. Final budget adjustment procedures.
- 20-9-133. Adoption and expenditure limitations of final budget.
- 20-9-134. Completion, filing, and delivery of final budgets.
- 20-9-135 through 20-9-139 reserved.
- 20-9-140. Terminated.
- 20-9-141. Computation of general fund net levy requirement by county superintendent.
- 20-9-142. Fixing and levying taxes by board of county commissioners.
- 20-9-143. Allocation of federal funds in lieu of property taxation.
- 20-9-144 reserved.
- 20-9-145. Repealed.
- 20-9-146 reserved.
- 20-9-147. Repealed.
- 20-9-148 through 20-9-150 reserved.
- 20-9-151. Budgeting procedure for joint districts.
- 20-9-152. Fixing and levying taxes for joint districts.
- 20-9-153 through 20-9-160 reserved.
- 20-9-161. Definition of budget amendment for budgeting purposes.
- 20-9-162. Authorization for budget amendment adoption.
- 20-9-163. Resolution for budget amendment — petition to superintendent of public instruction.
- 20-9-164. Notice of budget amendment resolution.
- 20-9-165. Budget amendment limitation, preparation, and adoption procedures.
- 20-9-166. State financial aid for budget amendments.
- 20-9-167. Repealed.
- 20-9-168. Emergency budget amendment tax levy.

Part 2 — Administration of Finances

- 20-9-201. Definitions and application.
- 20-9-202. County officials for financial administration when joint district.
- 20-9-203. Examination of district accounting records.
- 20-9-204. Conflicts of interests, letting contracts, and calling for bids.
- 20-9-205. Prohibition on division of contracts to circumvent bid requirements.
- 20-9-206. Repealed.
- 20-9-207. Documentation of expenditures.

- 20-9-208. Transfers among appropriation items of fund — transfers from fund to fund.
- 20-9-209. Lapse of budgeted appropriations and provision for unpaid claims.
- 20-9-210. Expenditure limitation of nonbudgeted fund.
- 20-9-211. Annual financial report of county superintendent.
- 20-9-212. Duties of county treasurer.
- 20-9-213. Duties of trustees.
- 20-9-214. Fees.
- 20-9-215. Destruction of certain financial records.
- 20-9-216 through 20-9-219 reserved.
- 20-9-220. Clearing accounts.
- 20-9-221. Procedure for issuance of warrants.
- 20-9-222. Repealed.
- 20-9-223. Cancellation of outstanding warrants — duplication.
- 20-9-224. Repealed.
- 20-9-225. Definitions relating to interest assessment.
- 20-9-226. Interest assessed on amounts due.
- 20-9-227. Exemptions from interest assessment.
- 20-9-228 through 20-9-230 reserved.
- 20-9-231. Metal mines tax reserve fund.
- 20-9-232 through 20-9-234 reserved.
- 20-9-235. Authorization for school district investment account.

Part 3 — Funding of Basic System of Quality Public Schools

- 20-9-301. Repealed.
- 20-9-302. School isolation.
- 20-9-303. Nonisolated school BASE budget funding — special education funds.
- 20-9-304. Repealed.
- 20-9-305. Proration and calculation of BASE funding program for joint district.
- 20-9-306. Definitions.
- 20-9-307. Repealed.
- 20-9-308. BASE budgets and maximum general fund budgets.
- 20-9-309. Basic system of free quality public elementary and secondary schools defined — identifying educationally relevant factors — establishment of funding formula and budgetary structure — legislative review.
- 20-9-310 reserved.
- 20-9-311. Calculation of average number belonging (ANB) — three-year averaging.
- 20-9-312. Repealed.
- 20-9-313. Circumstances under which regular average number belonging may be increased.
- 20-9-314. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase.
- 20-9-315. Repealed.
- 20-9-316. Repealed.
- 20-9-317. Repealed.
- 20-9-318. Repealed.
- 20-9-319. Repealed.
- 20-9-320. Repealed.
- 20-9-321. Allowable cost payment for special education.
- 20-9-322. Repealed.
- 20-9-323 through 20-9-325 reserved.
- 20-9-326. Annual inflation-related adjustments to basic entitlements and per-ANB entitlements.
- 20-9-327. Quality educator payment.
- 20-9-328. At-risk student payment.
- 20-9-329. Indian education for all payment.
- 20-9-330. American Indian achievement gap payment.
- 20-9-331. Basic county tax for elementary equalization and other revenue for county equalization of elementary BASE funding program.
- 20-9-332. Fines and penalties proceeds for elementary county equalization.
- 20-9-333. Basic county tax for high school equalization and other revenue for county equalization of high school BASE funding program.
- 20-9-334. Repealed.
- 20-9-335. Formula for apportionment of county equalization money.
- 20-9-336 through 20-9-340 reserved.
- 20-9-341. Definition of interest and income money.
- 20-9-342. Deposit of interest and income money by state board of land commissioners.
- 20-9-343. Definition of and revenue for state equalization aid.
- 20-9-344. Duties of board of public education for distribution of BASE aid.
- 20-9-345. Repealed.
- 20-9-346. Duties of superintendent of public instruction for state and county equalization aid distribution.
- 20-9-347. Distribution of BASE aid and special education allowable cost payments in support of BASE funding program — exceptions.
- 20-9-348. Estimation of state equalization aid for budget purposes.

20-9-349 and 20-9-350 reserved.
 20-9-351. Funding of deficiency in BASE aid.
 20-9-352. Repealed.
 20-9-353. Additional financing for general fund — election for authorization to impose.
 20-9-354 through 20-9-359 reserved.
 20-9-360. State equalization aid levy.
 20-9-361. County equalization revenue.
 20-9-362 through 20-9-365 reserved.
 20-9-366. Definitions.
 20-9-367. Eligibility to receive guaranteed tax base aid or state advance or reimbursement for school facilities.
 20-9-368. Amount of guaranteed tax base aid.
 20-9-369. Duties of superintendent of public instruction and department of revenue.
 20-9-370. Definitions.
 20-9-371. Calculation and uses of school facility entitlement amount.
 20-9-372 through 20-9-374 reserved.
 20-9-375. Repealed.

Part 4 — School Bonds

20-9-401. Applicable laws for school district bonding.
 20-9-402. Definition of school district for bonding purposes.
 20-9-403. Bond issues for certain purposes.
 20-9-404. Contracts and bonds for joint construction.
 20-9-405. Proportional joint ownership — disposition of money.
 20-9-406. Limitations on amount of bond issue — definition of federal impact aid basic support payment.
 20-9-407. Industrial facility agreement for bond issue in excess of maximum.
 20-9-408. Definition of forms of bonds.
 20-9-409. Repealed.
 20-9-410. Limitation of term and interest — timing for redemption.
 20-9-411. Dates of issue and payments.
 20-9-412. Issuance of refunding bonds without election.
 20-9-413 through 20-9-420 reserved.
 20-9-421. Election to authorize the issuance of school district bonds and the methods of introduction.
 20-9-422. Additional requirements for trustees' resolution calling bond election.
 20-9-423. Form, contents, and circularization of petition proposing school district bond election.
 20-9-424. Validation of petition — election administrator's certificate.
 20-9-425. Trustees' consideration of validated petition proposing bond election.
 20-9-426. Preparation and form of ballots for bond election.
 20-9-427. Notice of bond election by separate purpose.
 20-9-428. Determination of approval or rejection of proposition at bond election.
 20-9-429. Trustees' resolution to issue school district bonds.
 20-9-430. Notice of sale of school district bonds.
 20-9-431. Publication of notice of sale of school district bonds.
 20-9-432. Sale of school district bonds.
 20-9-433. Form and execution of school district bonds.
 20-9-434. Registration of school district bonds by county treasurer and copy for preservation.
 20-9-435. Delivery of school district bonds and disposition of sale money.
 20-9-436. County attorney to assist in the proceedings.
 20-9-437. School district liable on bonds.
 20-9-438. Preparation of general obligation debt service fund budget — operating reserve.
 20-9-439. Computation of net levy requirement for general obligation bonds — procedure when levy inadequate.
 20-9-440. Payment of debt service obligations — termination of interest.
 20-9-441. Redemption of bonds — investment of debt service fund moneys.
 20-9-442. Entries of payments and notification of school district.
 20-9-443. Disposition of remaining debt service fund.
 20-9-444. Liability of officers for failure to provide fund for payment of bonds.
 20-9-445. Liability for misuse of bond payment fund.
 20-9-446. Duty of county attorney to prosecute.
 20-9-447 through 20-9-450 reserved.
 20-9-451. Repealed.
 20-9-452. Repealed.
 20-9-453. Repealed.
 20-9-454. Repealed.
 20-9-455. Repealed.
 20-9-456. Repealed.
 20-9-457 through 20-9-460 reserved.
 20-9-461. Purpose.
 20-9-462. Repealed.
 20-9-463. Repealed.
 20-9-464. Statute of limitations — action to test validity.
 20-9-465. Action to restrain bond issue — time for bringing.

- 20-9-466. Repealed.
- 20-9-467. Repealed.
- 20-9-468 through 20-9-470 reserved.
- 20-9-471. Issuance of obligations — authorization — conditions.
- 20-9-472. Security for impact aid revenue bonds — agreement of state.

Part 5 — Special Purpose Funds

- 20-9-501. Retirement costs and retirement fund.
- 20-9-502. Purpose and authorization of building reserve fund by election — levy for school transition costs.
- 20-9-503. Budgeting, tax levy, and use of building reserve fund.
- 20-9-504. Extracurricular fund for pupil functions.
- 20-9-505. Purpose and establishment of nonoperating fund.
- 20-9-506. Budgeting and net levy requirement for nonoperating fund.
- 20-9-507. Miscellaneous programs fund.
- 20-9-508. Building fund.
- 20-9-509. Lease or rental agreement fund.
- 20-9-510. Traffic education fund.
- 20-9-511. Interlocal cooperative fund.
- 20-9-512. Compensated absence liability fund.
- 20-9-513. Repealed.
- 20-9-514. Impact aid fund.
- 20-9-515. Litigation reserve fund.
- 20-9-516. School facility improvement account.
- 20-9-517 through 20-9-530 reserved.
- 20-9-531. Repealed.
- 20-9-532. Repealed.
- 20-9-533. Technology acquisition and depreciation fund — limitations.
- 20-9-534. School technology purchases.
- 20-9-535 through 20-9-540 reserved.
- 20-9-541. Definitions.
- 20-9-542. School flexibility account — distribution of funds.
- 20-9-543. School flexibility fund — uses.
- 20-9-544. District school flexibility fund levy.

Part 6 — Public School Fund and Grants to Schools

- 20-9-601. Public school fund.
- 20-9-602. Title to farm mortgage lands vested in state and transfers validated.
- 20-9-603. Acceptance and expenditure of federal moneys for state.
- 20-9-604. Gifts, legacies, devises, and administration of endowment fund.
- 20-9-605 through 20-9-614 reserved.
- 20-9-615. Voluntary rural residential impact payments.
- 20-9-616 through 20-9-619 reserved.
- 20-9-620. Definition.
- 20-9-621. Permanent fund.
- 20-9-622. Guarantee account.
- 20-9-623 through 20-9-629 reserved.
- 20-9-630. School district block grants.
- 20-9-631. Countywide school retirement block grants.
- 20-9-632. Countywide school transportation block grants.

Part 7 — Educational Cooperative Agreements

- 20-9-701. Definitions of prime and cooperating agencies.
- 20-9-702. Financial administration of interlocal cooperative agreement.
- 20-9-703. District as prime agency.
- 20-9-704. District as cooperating agency.
- 20-9-705. Joint interstate school agreements.
- 20-9-706. Running start program — authorizing class credits at postsecondary institution — eligibility — payment for credits.
- 20-9-707. Agreement with accredited Montana job corps program.

Part 8 — Emergency School Closure

- 20-9-801. Purpose.
- 20-9-802. Definitions.
- 20-9-803. Repealed.
- 20-9-804. Repealed.
- 20-9-805. Rate of reduction in annual apportionment entitlement.
- 20-9-806. School closure by declaration of emergency.

Chapter Cross-References

Appropriations for public schools, Art. V, sec. 11, Mont. Const.
 School district property — exemption from taxation, Art. VIII, sec. 5, Mont. Const.
 Investment of public school fund, Art. VIII, sec. 13, Mont. Const.
 Public school fund constitutional provisions, Art. X, sec. 2, 3, 5, Mont. Const.
 Aid to sectarian schools prohibited, Art. X, sec. 6, Mont. Const.
 Statutes imposing new duties on school district to provide means of financing, 1-2-113.
 School district tax and revenue anticipation notes, Title 7, ch. 6, part 11.
 Investment of local government funds, 17-6-204.

Part 1

School Budgets

20-9-101. Application of budget system for districts and counties. The school budgeting procedure and provisions of this title apply to elementary and high school districts, to county funds supporting school district transportation and retirement obligations, and, whenever specified, to community college districts and to all funds requiring the adoption of a budget. Each district shall separately propose and adopt a budget in accordance with the requirements of this title.

History: En. 75-6701 by Sec. 207, Ch. 5, L. 1971; amd. Sec. 14, Ch. 266, L. 1977; R.C.M. 1947, 75-6701; amd. Sec. 16, Ch. 392, L. 1979; amd. Sec. 2, Ch. 276, L. 2003.

Cross-References

Definition of elementary and high school districts, 20-6-101.
 Definition of community college districts, 20-15-101.

20-9-102. General supervision of school budgeting system. The superintendent of public instruction has general supervision over the school budgeting procedure and provisions, as they relate to elementary and high school districts, prescribed by law and shall establish such rules as are necessary to secure compliance with the school budgeting laws.

History: En. 75-6702 by Sec. 208, Ch. 5, L. 1971; amd. Sec. 15, Ch. 266, L. 1977; R.C.M. 1947, 75-6702.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
 Powers and duties of Superintendent of Public Instruction, 20-3-106.

20-9-103. School budget form. (1) The format of the school budget form shall be prescribed by the superintendent of public instruction and shall provide for proper school budgeting procedures in accordance with the budgeting requirements of this title and generally accepted accounting principles. The superintendent of public instruction shall cause a sufficient number of the budget forms to be printed for use by all districts for each school fiscal year.

(2) Each district shall use the budget forms prescribed by the superintendent of public instruction, except that a district may in addition, with the approval of the superintendent of public instruction, use a more detailed form.

History: En. 75-6704 by Sec. 210, Ch. 5, L. 1971; R.C.M. 1947, 75-6704; amd. Sec. 3, Ch. 35, L. 1989.

20-9-104. General fund operating reserve. (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections (5) and (6), the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) Excess reserves as provided in subsection (5) may be appropriated to reduce the BASE budget levy, the over-BASE budget levy, or the additional levy provided by 20-9-353.

(4) Any portion of the general fund end-of-the-year fund balance that is not reserved under subsection (2) or reappropriated under subsection (3) is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b).

(5) The limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the unused balance of any amount:

(a) received in settlement of tax payments protested in a prior school fiscal year;

(b) received in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; or

(c) received in delinquent taxes from a prior school fiscal year.

(6) The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is \$10,000 or less.

History: En. 75-6924 by Sec. 274, Ch. 5, L. 1971; R.C.M. 1947, 75-6924; amd. Sec. 20, Ch. 11, Sp. L. June 1989; amd. Sec. 7, Ch. 767, L. 1991; amd. Secs. 2, 12, Ch. 6, Sp. L. July 1992; amd. Sec. 11, Ch. 633, L. 1993; amd. Sec. 1, Ch. 35, Sp. L. November 1993; amd. Sec. 4, Ch. 36, Sp. L. November 1993; amd. Sec. 35, Ch. 18, L. 1995; amd. Sec. 38, Ch. 451, L. 1995; amd. Sec. 1, Ch. 506, L. 1995; amd. Sec. 9, Ch. 554, L. 1999; amd. Sec. 11, Ch. 237, L. 2001.

20-9-105. Repealed. Sec. 94, Ch. 11, Sp. L. June 1989.

History: En. Sec. 1, Ch. 121, L. 1981.

20-9-106 through 20-9-110 reserved.

20-9-111. Repealed. Sec. 56, Ch. 767, L. 1991.

History: En. 75-6705 by Sec. 211, Ch. 5, L. 1971; R.C.M. 1947, 75-6705; amd. Sec. 4, Ch. 35, L. 1989.

20-9-112. Repealed. Sec. 4, Ch. 183, L. 1983.

History: En. 75-6706 by Sec. 212, Ch. 5, L. 1971; R.C.M. 1947, 75-6706; amd. Sec. 17, Ch. 392, L. 1979.

20-9-113. Repealed. Sec. 14, Ch. 211, L. 1997.

History: En. 75-6707 by Sec. 213, Ch. 5, L. 1971; R.C.M. 1947, 75-6707; amd. Sec. 1, Ch. 183, L. 1983; (4)En. Sec. 2, Ch. 183, L. 1983; amd. Sec. 12, Ch. 633, L. 1993.

20-9-114. Repealed. Sec. 14, Ch. 211, L. 1997.

History: En. 75-6708 by Sec. 214, Ch. 5, L. 1971; R.C.M. 1947, 75-6708.

20-9-115. Notice of final budget meeting. Between July 1 and August 4 of each year, the clerk of each district shall publish one notice, in the local or county newspaper that the trustees of the district determine to be the newspaper with the widest circulation in the district, stating the date, time, and place that the trustees will meet for the purpose of considering and adopting the final budget of the district, stating that the meeting of the trustees may be continued from day to day until the final adoption of the district's budget, and stating that any taxpayer in the district may appear at the meeting and be heard for or against any part of the budget.

History: En. 75-6709 by Sec. 215, Ch. 5, L. 1971; amd. Sec. 5, Ch. 277, L. 1977; amd. Sec. 1, Ch. 354, L. 1977; R.C.M. 1947, 75-6709; amd. Sec. 1, Ch. 131, L. 1979; amd. Sec. 31, Ch. 581, L. 1979; amd. Sec. 1, Ch. 77, L. 1989; amd. Sec. 36, Ch. 18, L. 1995; amd. Sec. 14, Ch. 22, L. 1997; amd. Sec. 112, Ch. 42, L. 1997; amd. Sec. 3, Ch. 211, L. 1997; amd. Sec. 1, Ch. 376, L. 2001.

Cross-References

Open meetings, Title 2, ch. 3, part 2.

20-9-116 through 20-9-120 reserved.

20-9-121. County treasurer's statement of cash balances and bond information.

(1) By July 10, the county treasurer shall prepare a statement for each district showing the amount of cash on hand for each fund maintained by the district at the close of the last-completed school fiscal year. The county treasurer shall also include on each district's statement the details on the obligation for bond retirement and interest for the school fiscal year just beginning. The format of the statement on fund cash balances and bond information must be prescribed by the superintendent of public instruction.

(2) By July 10, the county treasurer shall prepare a statement for each county school fund supported by countywide levies, showing the amount of cash on hand at the beginning of the school fiscal year, the receipts and apportionments, and the amount of cash on hand at the end of the school fiscal year, for each county school fund maintained during the immediately preceding school fiscal year. The format of this statement must be prescribed by the superintendent of public instruction.

(3) On or before July 10, the county treasurer shall deliver the statements of district and county fund cash balances and the bond information for each district to the county superintendent, who shall forward the information to each district.

History: En. 75-6710 by Sec. 216, Ch. 5, L. 1971; R.C.M. 1947, 75-6710; amd. Sec. 1, Ch. 260, L. 1995; amd. Sec. 4, Ch. 211, L. 1997.

Cross-References

School fiscal year, 20-1-301.

Payment of debt service obligations, 20-9-440.
Redemption of bonds, 20-9-441.

20-9-122. Statement of district, city, and town valuations. (1) By the first Monday of August, the department of revenue shall deliver to the county superintendent and to each city or town clerk a statement showing separately for each district and each city or town in the county the total assessed value and the total taxable value of all property in the districts, cities, or towns, as these valuations appear in the property tax record.

(2) In the case of a joint school district, the department of revenue shall, at the time of delivering the statement to the county superintendent, send a statement of the assessed value and taxable value of the portion of the joint school district situated in the appropriate county to the county superintendents and to the county commissioners of each county in which a part of the joint school district is situated.

History: En. 75-6711 by Sec. 217, Ch. 5, L. 1971; amd. Sec. 51, Ch. 391, L. 1973; R.C.M. 1947, 75-6711; amd. Sec. 128, Ch. 27, Sp. L. November 1993; amd. Sec. 5, Ch. 34, L. 2003.

Cross-References

Assessment and map books, Title 15, ch. 8, part 7.
Entry of taxes, Title 15, ch. 10, part 3.

20-9-123. Repealed. Sec. 14, Ch. 211, L. 1997.

History: En. 75-6712 by Sec. 218, Ch. 5, L. 1971; R.C.M. 1947, 75-6712.

20-9-124 through 20-9-129 reserved.

20-9-130. District obligation for students in youth detention facility. A school district is responsible for providing funding for the education of students of the district who are detained in a youth detention facility. The school district's obligation must be funded from the district's tuition fund or impact aid fund.

History: En. Sec. 1, Ch. 536, L. 1999; amd. Sec. 12, Ch. 237, L. 2001; amd. Sec. 5, Ch. 462, L. 2005.

20-9-131. Final budget meeting. (1) On or before August 15, on the date and at the time and place stated in the notice published pursuant to 20-9-115, the trustees of each district shall meet to consider all budget information and any attachments required by law.

(2) The trustees may continue the meeting from day to day but shall adopt the final budget for the district and determine the amounts to be raised by tax levies for the district not later than the fourth Monday in August and before the fixing of the tax levies for each district. Any taxpayer in the district may attend any portion of the trustees' meeting and be heard on the budget of the district or on any item or amount contained in the budget.

(3) Upon final approval, the trustees shall deliver the adopted budget, including the amounts to be raised by tax levies, to the county superintendent of schools within 5 days.

History: En. 75-6713 by Sec. 219, Ch. 5, L. 1971; amd. Sec. 6, Ch. 277, L. 1977; R.C.M. 1947, 75-6713; amd. Sec. 2, Ch. 131, L. 1979; amd. Sec. 1, Ch. 133, L. 1993; amd. Sec. 5, Ch. 211, L. 1997; amd. Sec. 105, Ch. 584, L. 1999; amd. Sec. 2, Ch. 376, L. 2001; amd. Sec. 6, Ch. 462, L. 2005.

Cross-References

Open meetings, Title 2, ch. 3, part 2.
Meetings and quorum, 20-3-322.

20-9-132. Final budget adjustment procedures. At the final budget meeting of the trustees, the trustees may make any changes or corrections they may consider necessary or proper in any item or amount of the budget either by eliminating the item or amount or by increasing or reducing the amount of any item. When it appears to the trustees that the amount proposed to be expended for any item of the final budget is in excess of the amount actually required to be expended for the item, the trustees shall reduce the amount to the amount actually required to be expended and shall enter in its minutes the reasons for the reduction. If any appropriation item of the final budget provides for the payment of wages or salary to more than one person, the district shall attach to the budget a separate listing of each position of employment, with the budgeted amount of compensation for each position.

History: En. 75-6714 by Sec. 220, Ch. 5, L. 1971; amd. Sec. 7, Ch. 277, L. 1977; R.C.M. 1947, 75-6714; amd. Sec. 6, Ch. 211, L. 1997.

20-9-133. Adoption and expenditure limitations of final budget. (1) When the trustees determine and set the amount of the budget for each budgeted fund, they shall enter the amount in the portion of the budget form provided for the reporting of the final budget and the

presiding officer and clerk shall sign the budget form. The resulting budget constitutes the final budget and the appropriations for the district for the current school fiscal year.

(2) Except as provided in subsection (3), the trustees and all officers and employees of the district are limited in making expenditures or incurring liabilities to the total amount of each fund's budget. Transfers from any appropriation item to another appropriation item within a fund's budget or transfers between different funds or between the final budget and a budget amendment may be made as provided by 20-9-208. Except as provided in subsection (3), money of the district may not be used to pay expenditures made, liabilities incurred, or warrants issued in excess of the final budget established for each budgeted fund.

(3) If a district incurs a legal bonded debt payment after the final debt service fund budget for the current fiscal year has been adopted and if payment on the debt is required for the current fiscal year, payment on the debt in the current school fiscal year is allowed if money is available.

History: En. 75-6716 by Sec. 222, Ch. 5, L. 1971; amd. Sec. 8, Ch. 277, L. 1977; R.C.M. 1947, 75-6716; amd. Sec. 1, Ch. 222, L. 1987; amd. Sec. 7, Ch. 568, L. 1991; amd. Sec. 1, Ch. 480, L. 2001.

Cross-References

Personal immunity and liability of trustees, 20-3-332.

Authorization to lease land as obligation of final budget, 20-6-625.

20-9-134. Completion, filing, and delivery of final budgets. After the final budget of the elementary, high school, or community college district has been adopted by the trustees, the county superintendent shall complete all the remaining portions of the budget forms and shall:

(1) send the final budget information to the superintendent of public instruction, on the forms provided by the superintendent, on or before the second Monday in September; and

(2) in the case of the community college districts, send the final budget information to the board of regents, on the forms provided by the community college coordinator, on or before September 1.

History: En. 75-6719 by Sec. 225, Ch. 5, L. 1971; amd. Sec. 10, Ch. 277, L. 1977; R.C.M. 1947, 75-6719; amd. Sec. 18, Ch. 392, L. 1979; amd. Sec. 2, Ch. 260, L. 1995; amd. Sec. 7, Ch. 343, L. 1999.

20-9-135 through 20-9-139 reserved.

20-9-140. Terminated. Sec. 5, Ch. 561, L. 1999.

History: En. Sec. 2, Ch. 561, L. 1999.

20-9-141. Computation of general fund net levy requirement by county superintendent. (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

(A) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(B) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid;

(iii) anticipated oil and natural gas production taxes;

(iv) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703; and

(v) school district block grants distributed under 20-9-630.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection

(1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Determine the sum of any amount remaining after the determination in subsection (1)(c) and any tuition payments for out-of-district pupils to be received under the provisions of 20-5-320 through 20-5-324, except the amount of tuition received for a pupil who is a child with a disability in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2).

(e) Subtract the amount determined in subsection (1)(d) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the current total taxable valuation of the district, as certified by the department of revenue under 15-10-202, divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703.

History: En. 75-6926 by Sec. 276, Ch. 5, L. 1971; R.C.M. 1947, 75-6926; amd. Sec. 1, Ch. 699, L. 1983; amd. Sec. 1, Ch. 110, L. 1985; amd. Sec. 1, Ch. 265, L. 1985; amd. Sec. 12, Ch. 695, L. 1985; amd. Sec. 15, Ch. 611, L. 1987; amd. Sec. 19, Ch. 655, L. 1987; amd. Sec. 5, Ch. 35, L. 1989; amd. Secs. 21, 83, Ch. 11, Sp. L. June 1989; amd. Sec. 8, Ch. 267, L. 1991; amd. Sec. 8, Ch. 767, L. 1991; amd. Sec. 6, Ch. 133, L. 1993; amd. Sec. 2, Ch. 325, L. 1993; amd. Sec. 14, Ch. 563, L. 1993; amd. Sec. 13, Ch. 633, L. 1993; amd. Sec. 16, Ch. 9, Sp. L. November 1993; amd. Sec. 2, Ch. 35, Sp. L. November 1993; amd. Sec. 39, Ch. 451, L. 1995; amd. Sec. 2, Ch. 580, L. 1995; amd. Sec. 2, Ch. 389, L. 1997; amd. Sec. 9, Ch. 496, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 1, Ch. 180, L. 1999; amd. Sec. 14, Ch. 515, L. 1999; amd. Secs. 106, 170(3), Ch. 584, L. 1999; amd. Sec. 7, Ch. 11, Sp. L. May 2000; amd. Sec. 5, Ch. 191, L. 2001; amd. Sec. 5, Ch. 464, L. 2001; amd. Sec. 117, Ch. 574, L. 2001; amd. Sec. 27, Ch. 130, L. 2005; amd. Sec. 1, Ch. 173, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 173 in (1)(a)(ii) at end after "20-9-353" deleted "including any additional funding for a general fund budget that exceeds the maximum general fund budget"; and made minor changes in style. Amendment effective April 10, 2007.

Retroactive Applicability: Section 5, Ch. 173, L. 2007, provided: "[Sections 1 and 2] [20-9-141 and 20-9-308] apply retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 1, 2007, in preparing school budgets for the 2008 school fiscal year, including but not limited to setting, scheduling, and holding general fund levy elections."

Cross-References

Computation of revenue and net tax levy requirements for transportation fund budget, 20-10-144.

20-9-142. Fixing and levying taxes by board of county commissioners. On the fourth Monday in August, the county superintendent shall place before the board of county commissioners the final adopted budget of the district. It is the duty of the board of county commissioners to fix and levy on all the taxable value of all the real and personal property within the district all district and county taxation required to finance, within the limitations provided by law, the final budget.

History: En. 75-6717 by Sec. 223, Ch. 5, L. 1971; amd. Sec. 9, Ch. 277, L. 1977; R.C.M. 1947, 75-6717; amd. Sec. 3, Ch. 726, L. 1985; amd. Sec. 6, Ch. 26, Sp. L. June 1986; amd. Sec. 9, Ch. 767, L. 1991; amd. Sec. 7, Ch. 133, L. 1993; amd. Sec. 107, Ch. 584, L. 1999; amd. Sec. 7, Ch. 462, L. 2005.

Cross-References

Property tax levies, Title 15, ch. 10.

Boundary change — effect on property tax valuation, 20-6-412.

Adult education fund levy, 20-7-705.

Bus depreciation reserve fund, 20-10-147.

20-9-143. Allocation of federal funds in lieu of property taxation. Federal funds received by a district under the provisions of impact aid, as provided in 20 U.S.C. 7701, et seq., or funds designated in lieu of the federal act by the congress of the United States must be deposited in the impact aid fund established in 20-9-514.

History: En. 75-6718 by Sec. 224, Ch. 5, L. 1971; R.C.M. 1947, 75-6718; amd. Sec. 14, Ch. 633, L. 1993; amd. Sec. 15, Ch. 22, L. 1997.

Cross-References

Power to accept gifts, 20-6-601.

Trustees allocation of federal funds to school food service, 20-10-204, 20-10-205.

20-9-144 reserved.

20-9-145. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. Sec. 101, Ch. 11, Sp. L. June 1989; amd. Sec. 10, Ch. 767, L. 1991.

20-9-146 reserved.

20-9-147. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. Sec. 50, Ch. 767, L. 1991; amd. Sec. 3, Ch. 466, L. 1993.

20-9-148 through 20-9-150 reserved.

20-9-151. Budgeting procedure for joint districts. (1) The trustees of a joint district shall adopt a budget according to the school budgeting laws and send a copy of the budget to the county superintendent of each county in which a part of the joint district is located. After approval by the trustees of the joint district, the final budgets of joint districts must be filed in the office of the county superintendent of each county in which a part of a joint district is located.

(2) The county superintendents receiving the budget of a joint district shall jointly compute the estimated budget revenue and determine the number of mills that need to be levied in the joint district for each fund for which a levy is to be made. The superintendent of public instruction shall establish a communication procedure to facilitate the joint estimation of revenue and determination of the tax levies.

(3) After determining, in accordance with law, the number of mills that need to be levied for each fund included on the final budget of the joint district, a joint statement of the required mill levies must be prepared and signed by the county superintendents involved in the computation. A copy of the statement must be delivered to the board of county commissioners of each county in which a part of the joint district is located not later than the Friday immediately preceding the fourth Monday in August.

History: Ap. p. 75-6721 by Sec. 227, Ch. 5, L. 1971; amd. Sec. 12, Ch. 277, L. 1977; Sec. 75-6721, R.C.M. 1947; Ap. p. 75-6720 by Sec. 226, Ch. 5, L. 1971; amd. Sec. 11, Ch. 277, L. 1977; Sec. 75-6720, R.C.M. 1947; R.C.M. 1947, 75-6720, 75-6721; amd. Sec. 108, Ch. 584, L. 1999; amd. Sec. 8, Ch. 462, L. 2005.

20-9-152. Fixing and levying taxes for joint districts. (1) At the time of fixing levies for county and school purposes on the fourth Monday in August, the board of county commissioners of each county in which a part of a joint district is located shall fix and levy taxes on that portion of the joint district located in each board's county at the number of mills for each levy recommended by the joint statement of the county superintendents.

(2) The board of county commissioners shall include in the amounts to be raised by the county levies for schools all the amounts required for the final budget of each part of a joint district located in the county, in accordance with the recommendations of the county superintendent.

History: En. 75-6722 by Sec. 228, Ch. 5, L. 1971; R.C.M. 1947, 75-6722; amd. Sec. 109, Ch. 584, L. 1999; amd. Sec. 9, Ch. 462, L. 2005.

Cross-References

Property tax levies, Title 15, ch. 10.

20-9-153 through 20-9-160 reserved.

20-9-161. Definition of budget amendment for budgeting purposes. As used in this title, unless the context clearly indicates otherwise, the term "budget amendment" for the purpose of school budgeting means an amendment to an adopted budget of the district for the following reasons:

(1) an increase in the enrollment of an elementary or high school district that is beyond what could reasonably have been anticipated at the time of the adoption of the budget for the

current school fiscal year whenever, because of the enrollment increase, the district's budget for any or all of the regularly budgeted funds does not provide sufficient financing to properly maintain and support the district for the entire current school fiscal year;

(2) the destruction or impairment of any school property necessary to the maintenance of the school, by fire, flood, storm, riot, insurrection, or act of God, to an extent rendering school property unfit for its present school use;

(3) a judgment for damages against the district issued by a court after the adoption of the budget for the current year;

(4) an enactment of legislation after the adoption of the budget for the current year that imposes an additional financial obligation on the district;

(5) the receipt of:

(a) a settlement of taxes protested in a prior school fiscal year;

(b) taxes from a prior school fiscal year as the result of a tax audit by the department of revenue or its agents;

(c) delinquent taxes from a prior school fiscal year; and

(d) a determination by the trustees that it is necessary to expend all or a portion of the taxes received under subsection (5)(a), (5)(b), or (5)(c) for a project or projects that were deferred from a previous budget of the district; or

(6) any other unforeseen need of the district that cannot be postponed until the next school year without dire consequences affecting the safety of the students and district employees or the educational functions of the district.

History: En. 75-6723 by Sec. 229, Ch. 5, L. 1971; R.C.M. 1947, 75-6723; amd. Sec. 19, Ch. 392, L. 1979; amd. Sec. 11, Ch. 767, L. 1991; amd. Sec. 40, Ch. 451, L. 1995; amd. Sec. 16, Ch. 22, L. 1997; amd. Sec. 10, Ch. 554, L. 1999.

Cross-References

Statutes imposing new duties on school district to provide means of financing, 1-2-113.

Liability exposure and insurance coverage, Title 2, ch. 9.

Disaster and emergency services, Title 10, ch. 3.

20-9-162. Authorization for budget amendment adoption. (1) (a) Notwithstanding the provisions of subsections (2) and (3), a budget amendment may be adopted at any time of the school fiscal year, except that a budget amendment required by an enrollment increase as provided in 20-9-161(1) may not be adopted until after October 1.

(b) The trustees may approve a budget amendment pursuant to 20-9-161(2) through (6) by a resolution.

(c) Whenever the trustees of a district decide that a budget amendment is necessary, they may proclaim the need for the budget amendment by a majority vote of the trustees. The proclamation must state the facts constituting the need for the budget amendment, the funds affected by the budget amendment, the anticipated source of financing, the estimated amount of money required to finance the budget amendment, and the time and place the trustees will meet for the purpose of considering and adopting the budget amendment for the current school fiscal year.

(2) The trustees shall send a copy of the proclamation to the county superintendent and to the board of county commissioners of the county.

(3) The trustees shall submit a budget amendment for an enrollment increase to the superintendent of public instruction for approval in the manner provided in 20-9-163.

History: En. 75-6724 by Sec. 230, Ch. 5, L. 1971; R.C.M. 1947, 75-6724; amd. Sec. 12, Ch. 767, L. 1991; amd. Sec. 15, Ch. 633, L. 1993.

Cross-References

Emergency transportation fund budget, 20-10-143.

20-9-163. Resolution for budget amendment — petition to superintendent of public instruction. (1) Whenever the trustees of a district decide that a budget amendment is necessary because of an enrollment increase, they may petition the superintendent of public instruction to adopt a resolution for the budget amendment. The petition must be signed by a majority of the trustees.

(2) The petition must state the facts constituting the need for the budget amendment, the estimated amount of money required to fund the budget amendment, the funds affected by the

budget amendment, the anticipated source of financing for the budget amendment, and the current year enrollment.

(3) The superintendent of public instruction shall promptly approve or disapprove the petition requesting approval to adopt a resolution for a budget amendment because of increased enrollment. The superintendent of public instruction shall adjust the district's maximum general fund budget based on the approved enrollment increase. Upon approval, a district may not adopt a budget amendment if the amount will cause the district to exceed the district's adjusted maximum general fund budget. If the petition is approved, the trustees may adopt a resolution for a budget amendment and take all other steps required for the adoption of a budget amendment. Approval of a petition by the superintendent of public instruction authorizes the board of trustees to initiate a budget amendment by resolution and does not relieve the trustees of the necessity of complying with the requirements of the school budgeting laws. Approval of the petition may not be construed as approval of any subsequent application for increased state aid on account of the budget amendment.

History: En. 75-6725 by Sec. 231, Ch. 5, L. 1971; R.C.M. 1947, 75-6725; amd. Sec. 20, Ch. 392, L. 1979; amd. Sec. 13, Ch. 767, L. 1991; amd. Sec. 16, Ch. 633, L. 1993; amd. Sec. 13, Ch. 237, L. 2001.

20-9-164. Notice of budget amendment resolution. A copy of the budget amendment resolution must be published one time in a newspaper that will give notice to the largest number of people of the district as determined by the trustees, and a copy of the resolution must be posted at each schoolhouse of the district. A copy of the budget amendment resolution must also be delivered to the county superintendent and to the county clerk as the clerk of the board of county commissioners of the county. The publication, posting, and delivery of the resolution must be done not less than 1 week before the day specified in the resolution for the consideration and adoption of a budget amendment.

History: En. 75-6726 by Sec. 232, Ch. 5, L. 1971; R.C.M. 1947, 75-6726; amd. Sec. 14, Ch. 767, L. 1991.

20-9-165. Budget amendment limitation, preparation, and adoption procedures.

(1) The meeting of the trustees to consider and adopt a budget amendment must be open to the public, and any taxpayer in the district has the right to appear and be heard. If at the meeting a majority of the trustees present find that there is sufficient need for a budget amendment, the trustees may make and adopt a final budget amendment, setting forth fully the facts constituting the need for the budget amendment. In adopting the final budget amendment, the trustees may budget for any fund that was included on the final budget of the district for the current school fiscal year. The budget must be itemized to show the amount appropriated for each item.

(2) When the budget amendment is the result of increased enrollment, the maximum amount of the budget amendment for all funds must be determined in the following manner:

(a) determine the total amount in the final budget for the current school fiscal year of all funds affected by the enrollment increase, less any amounts appropriated as capital outlay and any amount appropriated for addition to the operating reserve;

(b) divide the amount determined in subsection (2)(a) by the number of pupils originally enrolled in the district during the immediately preceding school fiscal year. The resulting cost per pupil is the maximum permissible per-pupil expenditure in the budget amendment.

(c) determine the enrollment increase of the current school fiscal year by subtracting the number of pupils originally enrolled during the immediately preceding school fiscal year from the number of pupils enrolled for the current school year. The result is the enrollment increase for the current school fiscal year.

(d) multiply the cost per pupil determined in subsection (2)(b) by the enrollment increase determined in subsection (2)(c). The result is the maximum limitation on a budget amendment for amendments resulting from increased enrollment.

(3) For other types of budget amendments, the budget amendment is limited to the expenditures considered by the trustees to be reasonable and necessary to finance the conditions of the budget amendment and the final budget amendment must include the details of the proposed expenditures.

(4) Whenever the trustees adopt a budget amendment for the transportation fund, the trustees shall attach to the budget amendment a copy of each transportation contract that is

connected with the budget amendment and that has been prepared and executed in accordance with the school transportation contract laws.

(5) After the trustees have adopted the budget amendment by a majority vote of the trustees, it must be signed by the presiding officer of the trustees and the clerk of the district and copies must be sent to the county superintendent and the superintendent of public instruction.

History: En. 75-6727 by Sec. 233, Ch. 5, L. 1971; amd. Sec. 13, Ch. 277, L. 1977; R.C.M. 1947, 75-6727; amd. Sec. 21, Ch. 392, L. 1979; amd. Sec. 69, Ch. 370, L. 1987; amd. Sec. 15, Ch. 767, L. 1991; amd. Sec. 42, Ch. 633, L. 1993; amd. Sec. 3, Ch. 260, L. 1995; amd. Sec. 7, Ch. 211, L. 1997.

Cross-References

Open meetings, Title 2, ch. 3, part 2.

School fiscal year, 20-1-301.

Meetings and quorum, 20-3-322.

20-9-166. State financial aid for budget amendments. Whenever a final budget amendment has been adopted for the general fund to finance the cost of an amendment resulting from increased enrollment, the trustees may apply to the superintendent of public instruction for an increased payment from the state for direct state aid. Whenever a final budget amendment has been adopted for the transportation fund, the trustees may apply to the superintendent of public instruction for an increased payment for state transportation reimbursement. The superintendent of public instruction shall adopt rules for the application. The superintendent of public instruction shall approve or disapprove each application for increased state aid made in accordance with 20-9-314 and this section. When the superintendent of public instruction approves an application, the superintendent of public instruction shall determine the additional amount of direct state aid or the state transportation reimbursement that will be made available to the applicant district because of the increase in enrollment or additional pupil transportation obligations. The superintendent of public instruction shall notify the applicant district of the superintendent's approval or disapproval and, in the event of approval, the amount of additional state aid that will be made available for the general fund or the transportation fund. The superintendent of public instruction shall disburse the state aid to the eligible district at the time the next regular state aid payment is made.

History: En. 75-6729 by Sec. 235, Ch. 5, L. 1971; R.C.M. 1947, 75-6729; amd. Sec. 16, Ch. 767, L. 1991; amd. Sec. 43, Ch. 633, L. 1993; amd. Sec. 32, Ch. 509, L. 1995; amd. Sec. 17, Ch. 22, L. 1997; amd. Sec. 8, Ch. 343, L. 1999.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

State transportation reimbursement, 20-10-145.

20-9-167. Repealed. Sec. 56, Ch. 767, L. 1991.

History: En. 75-6730 by Sec. 236, Ch. 5, L. 1971; R.C.M. 1947, 75-6730.

20-9-168. Emergency budget amendment tax levy. When a budget amendment has been adopted by the board of trustees under 20-9-161(2) and a district does not have sufficient funds, including insurance proceeds and reserves, to finance the budget amendment, the district may levy a tax in the ensuing school year to fund the expenditures authorized by the budget amendment. The amount levied may not exceed the unfunded amount of the budget amendment.

History: En. Sec. 11, Ch. 6, Sp. L. July 1992; amd. Sec. 44, Ch. 633, L. 1993; amd. Sec. 110, Ch. 584, L. 1999; amd. Sec. 14, Ch. 237, L. 2001; amd. Sec. 118, Ch. 574, L. 2001.

Part 2 Administration of Finances

Part Cross-References

Management of school money, Title 7, ch. 6, part 28.

Duty of Superintendent of Public Instruction to supervise school financial administration, 20-3-106.

Duty of trustees to conduct financial business of district, 20-3-324.

20-9-201. Definitions and application. (1) As used in this title, unless the context clearly indicates otherwise, "fund" means a separate detailed account of receipts and expenditures for a specific purpose as authorized by law or by the superintendent of public instruction under the provisions of subsection (2). Funds are classified as follows:

(a) A “budgeted fund” means any fund for which a budget must be adopted in order to expend money from the fund. The general fund, transportation fund, bus depreciation reserve fund, tuition fund, retirement fund, debt service fund, building reserve fund, adult education fund, nonoperating fund, and any other funds designated by the legislature are budgeted funds.

(b) A “nonbudgeted fund” means any fund for which a budget is not required in order to expend money on deposit in the fund. The school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, interlocal cooperative fund, internal service fund, impact aid fund, enterprise fund, agency fund, extracurricular fund, metal mines tax reserve fund, endowment fund, litigation reserve fund, and any other funds designated by the legislature are nonbudgeted funds.

(2) The school financial administration provisions of this title apply to all money of any elementary or high school district. Elementary and high school districts shall record the receipt and disbursement of all money in accordance with generally accepted accounting principles. The superintendent of public instruction has general supervisory authority as prescribed by law over the school financial administration provisions, as they relate to elementary and high school districts. The superintendent of public instruction shall adopt rules necessary to secure compliance with the law.

(3) (a) Except as provided in subsection (3)(b) or as otherwise provided by law, whenever the trustees of a district determine that a fund is inactive and will no longer be used, the trustees shall close the fund by transferring all cash and other account balances to any fund considered appropriate by the trustees if the fund does not have a cash or fund balance deficit.

(b) If the trustees of a district determine that its tuition fund is inactive and will no longer be used, the trustees shall close the fund by transferring any cash and account balances to the district’s miscellaneous programs fund if the tuition fund does not have a cash or fund balance deficit.

History: (1)En. Sec. 237, Ch. 5, L. 1971; amd. Sec. 1, Ch. 424, L. 1977; Sec. 75-6801, R.C.M. 1947; (2)En. Sec. 238, Ch. 5, L. 1971; amd. Sec. 16, Ch. 266, L. 1977; Sec. 75-6802, R.C.M. 1947; R.C.M. 1947, 75-6801, 75-6802; amd. Sec. 22, Ch. 392, L. 1979; amd. Sec. 3, Ch. 135, L. 1987; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 2, Ch. 1, Sp. L. June 1989; amd. Sec. 22, Ch. 11, Sp. L. June 1989; amd. Sec. 8, Ch. 568, L. 1991; amd. Sec. 17, Ch. 767, L. 1991; amd. Sec. 17, Ch. 633, L. 1993; amd. Sec. 2, Ch. 493, L. 1995; amd. Sec. 1, Ch. 356, L. 2001; amd. Sec. 2, Ch. 480, L. 2001.

Cross-References

Appropriation for sectarian purpose prohibited, Art. V, sec. 11, Mont. Const.
Public school fund, Art. X, sec. 5, Mont. Const.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Adult education fund, 20-7-705.
Special purpose funds — budgeted funds, Title 20, ch. 9, part 5.
Transportation fund budget required, 20-10-143.
School food services fund a nonbudgeted fund, 20-10-207.

20-9-202. County officials for financial administration when joint district. (1) When all of the schools of the joint district are located in one county, the school financial administration duties assigned to county officials shall be performed by those officials of the county wherein the schools of the district are located. When the schools of a joint district are located in more than one county, the superintendent of public instruction shall designate the county officials to perform such duties for the joint district.

(2) The designated county treasurer shall be the custodian of all joint district moneys and shall perform all other duties of the county treasurer for the joint district. The superintendent of public instruction shall disburse all moneys for a joint district to such county treasurer.

History: En. 75-6803 by Sec. 239, Ch. 5, L. 1971; amd. Sec. 14, Ch. 277, L. 1977; R.C.M. 1947, 75-6803.

Cross-References

Duties of County Treasurer, 7-6-2111.

20-9-203. Examination of district accounting records. The accounting records of all first-, second-, and third-class school districts must be audited in accordance with 2-7-503. The trustees of the district shall file a copy of the completed audit report with the department of administration, the superintendent of public instruction, and the county superintendent.

History: En. 75-6807 by Sec. 243, Ch. 5, L. 1971; amd. Sec. 17, Ch. 266, L. 1977; R.C.M. 1947, 75-6807; amd. Sec. 2, Ch. 336, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 5, Ch. 573, L. 1981; amd. Sec. 1, Ch. 115, L. 1985; amd. Sec. 24, Ch. 489, L. 1991; amd. Sec. 52, Ch. 483, L. 2001.

Cross-References

Audits of political subdivisions, Title 2, ch. 7, part 5.

20-9-204. Conflicts of interests, letting contracts, and calling for bids. (1) It is unlawful for a trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract made by the trustee while acting in that official capacity or by the board of trustees of which the trustee is a member; or

(b) be employed in any capacity by the trustee's own school district.

(2) For the purposes of subsection (1):

(a) "pecuniary interest" does not include holding an interest of 10% or less in a corporation; and

(b) "contract" does not include:

(i) merchandise sold to the highest bidder at public auctions;

(ii) investments or deposits in financial institutions that are in the business of loaning or receiving money when the investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or

(iii) contracts for professional services, other than salaried services, or for maintenance or repair services or supplies when the services or supplies are not reasonably available from other sources if the interest of any board member and a determination of the lack of availability are entered in the minutes of the board meeting at which the contract is considered.

(3) (a) Except for district needs that must be met because of an unforeseen emergency, as defined in 20-3-322(5), or as provided in subsections (4) and (7) of this section, whenever any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district is necessary, the work done or the purchase made must be by contract if the sum exceeds \$50,000.

(b) Except as provided in Title 18, chapter 2, part 5, each contract must be let to the lowest responsible bidder after advertisement for bids. The advertisement must be published in the newspaper that will give notice to the largest number of people of the district as determined by the trustees. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section is void. The bidding requirements applicable to services performed for the benefit of the district under this section do not apply to:

(i) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(ii) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(iii) an attorney;

(iv) a consulting actuary;

(v) a private investigator licensed by any jurisdiction;

(vi) a claims adjuster;

(vii) an accountant licensed under Title 37, chapter 50; or

(viii) a project, as defined in 18-2-501, for which a governing body, as defined in 18-2-501, enters into an alternative project delivery contract pursuant to Title 18, chapter 2, part 5.

(4) A district may enter into a cooperative purchasing contract for the procurement of supplies or services with one or more districts. The award of a contract to a successful bidder must comply with the requirements of subsection (5). The request for bids must be advertised in a daily newspaper of general circulation in each county in which a district participating in the cooperative purchasing contract is located. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids.

(5) Except as provided in Title 18, chapter 2, part 5, whenever bidding is required, the contract must be awarded to the lowest responsible bidder, except that any or all bids may be rejected.

(6) This section may not require the board of trustees to let a contract for any routine and regularly performed maintenance or repair project or service that can be accomplished by

district staff whose regular employment with the school district is related to the routine performance of maintenance for the district.

(7) Subsection (3) does not apply to the solicitation or award of a contract for an investment grade energy audit or an energy performance contract pursuant to Title 90, chapter 4, part 11, including construction and installation of conservation measures pursuant to the energy performance contract.

History: En. 75-6808 by Sec. 244, Ch. 5, L. 1971; amd. Sec. 1, Ch. 42, L. 1971; amd. Sec. 1, Ch. 149, L. 1973; amd. Sec. 18, Ch. 266, L. 1977; R.C.M. 1947, 75-6808; amd. Sec. 1, Ch. 314, L. 1979; amd. Sec. 23, Ch. 392, L. 1979; amd. Sec. 1, Ch. 452, L. 1983; amd. Sec. 1, Ch. 154, L. 1991; amd. Sec. 1, Ch. 39, L. 1995; amd. Sec. 1, Ch. 368, L. 1999; amd. Sec. 1, Ch. 75, L. 2001; amd. Sec. 1, Ch. 103, L. 2001; amd. Sec. 10, Ch. 162, L. 2005; amd. Sec. 10, Ch. 574, L. 2005; amd. Sec. 1, Ch. 106, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 106 in (3)(a) after "whenever" deleted "the estimated cost of", after "supplies for the district" substituted "is necessary" for "exceeds the sum of \$25,000", and after "contract" inserted reference to sums exceeding \$50,000; and made minor changes in style. Amendment effective March 30, 2007.

Cross-References

Code of ethics, Title 2, ch. 2, part 1.
 Preference to Montana contractors, 18-1-102.
 Security to accompany bids, 18-1-203.
 Preference to Montana labor, 18-2-403.
 Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.
 School officers not to act as agents, 20-1-201.
 Conflict of interest, 20-1-205.
 Penalty for violation of school laws, 20-1-207.
 Candidate qualification and nomination, 20-3-305.
 Letting contracts for school facilities, 20-6-606.
 School bus purchase — contract — bids, 20-10-110.
 Transportation contract — bid letting, 20-10-125.

20-9-205. Prohibition on division of contracts to circumvent bid requirements. (1)

Whenever any law of this state provides a limitation upon the amount of money that a school district can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a school district shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder which by its nature or character is integral to such public work or construction project, or serves to accomplish one of the basic purposes or functions thereof, into several contracts, separate work orders, or by any similar device.

(2) This section shall apply not only where the public work or construction project is divided into several projects which are constructed at approximately the same period of time but also where the public work or construction project is divided into several projects which are constructed in different time periods or over an extended period of time.

History: En. Sec. 2, Ch. 149, L. 1973; R.C.M. 1947, 75-6808.1.

20-9-206. Repealed. Sec. 12, Ch. 260, L. 1995.

History: En. 75-6809 by Sec. 245, Ch. 5, L. 1971; amd. Sec. 1, Ch. 241, L. 1973; R.C.M. 1947, 75-6809; amd. Sec. 18, Ch. 767, L. 1991.

20-9-207. Documentation of expenditures. (1) The expenditure of district moneys, other than employee contract payments, may be authorized by the trustees when:

(a) payee-signed claims, wherein the payee attests to the accuracy of the claim and that he has not received the claimed amount, have been issued to the district; or

(b) the payee has provided the district with an invoice or other document identifying the quantity and total cost per item included on the invoice.

(2) The intention of this section is to provide sufficient documentation for each expenditure of district moneys.

History: En. Sec. 1, Ch. 366, L. 1973; R.C.M. 1947, 75-6809.1.

Cross-References

Claims and actions against political subdivisions, Title 2, ch. 9, part 3.

20-9-208. Transfers among appropriation items of fund — transfers from fund to fund. (1) Whenever it appears to the trustees of a district that the appropriated amount of an item of a budgeted fund of the final budget or a budget amendment is in excess of the amount

actually required during the school fiscal year for the appropriation item, the trustees may transfer any of the excess appropriation amount to any other appropriation item of the same budgeted fund.

(2) Unless otherwise restricted by a specific provision in this title, transfers may be made between different funds of the same district or between the final budget and a budget amendment under one of the following circumstances:

(a) (i) Except as provided in subsection (2)(a)(ii), transfers may be made from one budgeted fund to another budgeted fund or between the final budget and a budget amendment for a budgeted fund whenever the trustees determine, in their discretion, that the transfer of funds is necessary to improve the efficiency of spending within the district or when an action of the trustees results in savings in one budgeted fund that can be put to more efficient use in another budgeted fund. Transfers may not be made with funds approved by the voters or with funds raised by a nonvoted levy unless the transfer is within or directly related to the purposes for which the funds were raised. Before a transfer can occur, the trustees shall hold a properly noticed hearing to accept public comment on the transfer.

(ii) Unless otherwise authorized by a specific provision in this title, transfers from the general fund to any other fund and transfers to the general fund from any other fund are prohibited.

(b) Transfers may be made from one nonbudgeted fund to another nonbudgeted fund whenever the trustees determine that the transfer of funds is necessary to improve the efficiency of spending within the district. Transfers may not be made with funds restricted by state or federal law unless the transfer is in compliance with any restrictions or conditions imposed by state or federal law. Before a transfer can occur, the trustees shall hold a properly noticed hearing to accept public comment on the transfer.

(3) The trustees shall enter the authorized transfers upon the permanent records of the district.

History: En. 75-6812 by Sec. 248, Ch. 5, L. 1971; amd. Sec. 4, Ch. 241, L. 1973; R.C.M. 1947, 75-6812; amd. Sec. 19, Ch. 767, L. 1991; amd. Sec. 45, Ch. 633, L. 1993; amd. Sec. 3, Ch. 480, L. 2001.

Cross-References

School fiscal year, 20-1-301.

20-9-209. Lapse of budgeted appropriations and provision for unpaid claims. (1) All appropriations for a budgeted fund in the regular budget or for a budget amendment for a given school fiscal year lapse on the last day of the school fiscal year, except the appropriations for:

(a) uncompleted improvements in progress of construction; and
(b) an obligation for the purchase of personal property ordered but not paid for during the current fiscal year.

(2) A lawful claim presented to the district for payment under a lapsed appropriation is an obligation of the budget for the next school fiscal year.

History: En. 75-6813 by Sec. 249, Ch. 5, L. 1971; R.C.M. 1947, 75-6813; amd. Sec. 1, Ch. 478, L. 1983; amd. Sec. 20, Ch. 767, L. 1991; amd. Sec. 4, Ch. 260, L. 1995.

Cross-References

School fiscal year, 20-1-301.

20-9-210. Expenditure limitation of nonbudgeted fund. The expenditure limitation, at any time during the school fiscal year, for a nonbudgeted fund is the amount of cash balance of the nonbudgeted fund.

History: En. 75-6814 by Sec. 250, Ch. 5, L. 1971; R.C.M. 1947, 75-6814; amd. Sec. 21, Ch. 767, L. 1991.

20-9-211. Annual financial report of county superintendent. No later than the second Monday in September of each school fiscal year, the county superintendent shall report to the superintendent of public instruction the financial activity during the preceding school fiscal year of each district of the county in accordance with the reporting requirements prescribed by the superintendent of public instruction. The reports must be prepared on forms provided by the superintendent of public instruction.

History: En. 75-6804 by Sec. 240, Ch. 5, L. 1971; R.C.M. 1947, 75-6804; amd. Sec. 16, Ch. 133, L. 1993.

Cross-References

School fiscal year, 20-1-301.

20-9-212. Duties of county treasurer. The county treasurer of each county:

(1) must receive and shall hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts that are entitled to a portion of the money according to the apportionments ordered by the county superintendent or by the superintendent of public instruction. A separate accounting must be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

- (a) the basic county tax for elementary equalization;
- (b) the basic county tax for high school equalization;
- (c) the county tax in support of the transportation schedules;
- (d) the county tax in support of the elementary and high school district retirement obligations; and
- (e) any other county tax for schools, including the community colleges, that may be authorized by law and levied by the county commissioners.

(2) whenever requested, shall notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) and the amount of any other school money subject to apportionment and apportion the county and other school money to the districts in accordance with the apportionment ordered by the county superintendent or the superintendent of public instruction;

(3) shall keep a separate accounting of the receipts, expenditures, and cash balances for each fund;

(4) except as otherwise limited by law, shall pay all warrants properly drawn on the county or district school money;

(5) must receive all revenue collected by and for each district and shall deposit these receipts in the fund designated by law or by the district if a fund is not designated by law. Interest and penalties on delinquent school taxes must be credited to the same fund and district for which the original taxes were levied.

(6) shall send all revenue received for a joint district, part of which is situated in the county, to the county treasurer designated as the custodian of the revenue, no later than December 15 of each year and every 3 months after that date until the end of the school fiscal year;

(7) at the direction of the trustees of a district, shall assist the district in the issuance and sale of tax and revenue anticipation notes as provided in Title 7, chapter 6, part 11;

(8) shall register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in all funds of the district to make payment of the warrant. Redemption of registered warrants must be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

(9) when directed by the trustees of a district, shall invest the money of the district within 3 working days of the direction;

(10) each month, shall give to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, registered warrants, interest distribution, amounts and types of revenue received, and the cash balance;

(11) shall remit promptly to the department of revenue receipts for the county tax for a vocational-technical program within a unit of the university system when levied by the board of county commissioners under the provisions of 20-25-439;

(12) shall invest the money received from the basic county taxes for elementary and high school equalization, the county levy in support of the elementary and high school district retirement obligations, and the county levy in support of the transportation schedules within 3 working days of receipt. The money must be invested until the working day before it is required to be distributed to school districts within the county or remitted to the state. Clerks of a school district shall provide a minimum of 30 hours' notice in advance of cash demands to meet payrolls, claims, and electronic transfers that are in excess of \$50,000, pursuant to 20-3-325. If a clerk of a district fails to provide the required 30-hour notice, the county treasurer shall assess a fee equal to any charges demanded by the state investment pool or other permissible investment manager for improperly noticed withdrawal of funds. Permissible investments are specified in 20-9-213(4). All investment income must be deposited, and credited proportionately, in the funds

established to account for the taxes received for the purposes specified in subsections (1)(a) through (1)(d).

(13) shall remit on a monthly basis to the department of revenue, as provided in 15-1-504, all county equalization revenue received under the provisions of 20-9-331 and 20-9-333, including all interest earned, in repayment of the state advance for county equalization prescribed in 20-9-347. Any funds in excess of a state advance must be used as required in 20-9-331(1)(b) and 20-9-333(1)(b).

History: En. 75-6805 by Sec. 241, Ch. 5, L. 1971; amd. Sec. 5, Ch. 241, L. 1973; amd. Sec. 3, Ch. 304, L. 1975; amd. Sec. 1, Ch. 180, L. 1977; amd. Sec. 1, Ch. 291, L. 1977; R.C.M. 1947, 75-6805; amd. Sec. 24, Ch. 392, L. 1979; amd. Sec. 5, Ch. 682, L. 1979; amd. Sec. 1, Ch. 234, L. 1983; amd. Sec. 1, Ch. 438, L. 1985; amd. Sec. 12, Ch. 481, L. 1985; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 23, Ch. 11, Sp. L. June 1989; amd. Sec. 5, Ch. 711, L. 1991; amd. Sec. 3, Ch. 6, Sp. L. July 1992; amd. Sec. 17, Ch. 133, L. 1993; amd. Sec. 46, Ch. 633, L. 1993; amd. Sec. 5, Ch. 260, L. 1995; amd. Sec. 14, Ch. 308, L. 1995; amd. Sec. 18, Ch. 22, L. 1997; amd. Sec. 1, Ch. 102, L. 1999; amd. Sec. 9, Ch. 257, L. 2001; amd. Sec. 6, Ch. 464, L. 2001; amd. Sec. 2, Ch. 196, L. 2005; amd. Sec. 5, Ch. 463, L. 2005.

Cross-References

Local government — duties of County Treasurer, 7-6-2111.

Management of school funds, 7-6-2801.

Teachers' retirement, Title 19, ch. 20.

School fiscal year, 20-1-301.

School buses and transportation, Title 20, ch. 10, part 1.

20-9-213. Duties of trustees. The trustees of each district have the authority to transact all fiscal business and execute all contracts in the name of the district. A person other than the trustees acting as a governing board may not expend money of the district. In conducting the fiscal business of the district, the trustees shall:

(1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school money for each fund and account maintained by the district in accordance with generally accepted accounting principles and the rules prescribed by the superintendent of public instruction. The record of the accounting must be open to public inspection at any meeting of the trustees.

(2) authorize all expenditures of district money and cause warrants or checks, as applicable, to be issued for the payment of lawful obligations;

(3) issue warrants or checks, as applicable, on any budgeted fund in anticipation of budgeted revenue, except that the expenditures may not exceed the amount budgeted for the fund;

(4) invest any money of the district, whenever in the judgment of the trustees the investment would be advantageous to the district, either by directing the county treasurer to invest any money of the district or by directly investing the money of the district in eligible securities, as identified in 7-6-202, in savings or time deposits in a state or national bank, building or loan association, savings and loan association, or credit union insured by the FDIC or NCUA located in the state, or in a repurchase agreement that meets the criteria provided for in 7-6-213. All interest collected on the deposits or investments must be credited to the fund from which the money was withdrawn, except that interest earned on account of the investment of money realized from the sale of bonds must be credited to the debt service fund or the building fund, at the discretion of the board of trustees. The placement of the investment by the county treasurer is not subject to ratable distribution laws and must be done in accordance with the directive from the board of trustees. A district may invest money under the state unified investment program established in Title 17, chapter 6, or in a unified investment program with the county treasurer, with other school districts, or with any other political subdivision if the unified investment program is limited to investments that meet the requirements of this subsection (4), including those investments authorized by the board of investments under Title 17, chapter 6. A school district that enters into a unified investment program with another school district or political subdivision other than the state shall do so under the auspices of and by complying with the provisions governing interlocal cooperative agreements authorized under Title 7, chapter 11, and educational cooperative agreements authorized under Title 20, chapter 9, part 7. A school district either shall contract for investment services with any company complying with the provisions of Title 30, chapter 10, or shall contract with the state board of investments for investment services.

(5) cause the district to record each transaction in the appropriate account before the accounts are closed at the end of the fiscal year in order to properly report the receipt, use, and disposition of all money and property for which the district is accountable;

(6) report annually to the county superintendent, not later than August 15, the financial activities of each fund maintained by the district during the last-completed school fiscal year, on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts must be submitted not later than September 1 to the county superintendent of each county in which part of the joint district is situated.

(7) whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of public education;

(8) cause the accounting records of the district to be audited as required by 2-7-503; and

(9) perform, in the manner permitted by law, other fiscal duties that are in the best interests of the district.

History: En. 75-6806 by Sec. 242, Ch. 5, L. 1971; amd. Sec. 7, Ch. 137, L. 1973; amd. Sec. 2, Ch. 366, L. 1973; amd. Sec. 4, Ch. 304, L. 1975; R.C.M. 1947, 75-6806; amd. Sec. 1, Ch. 45, L. 1981; amd. Sec. 16, Ch. 421, L. 1985; amd. Sec. 1, Ch. 428, L. 1987; amd. Sec. 6, Ch. 35, L. 1989; amd. Sec. 3, Ch. 1, Sp. L. June 1989; amd. Sec. 24, Ch. 11, Sp. L. June 1989; amd. Sec. 25, Ch. 489, L. 1991; amd. Sec. 39, Ch. 10, L. 1993; amd. Sec. 18, Ch. 133, L. 1993; amd. Sec. 6, Ch. 260, L. 1995; amd. Sec. 3, Ch. 406, L. 1995; amd. Sec. 2, Ch. 102, L. 1999; amd. Sec. 2, Ch. 205, L. 2001.

Cross-References

Investment of certain construction bond proceeds, 7-7-2112.

Authority to request, accept, and disburse money, 20-3-208.

Duties of trustees, 20-3-324.

Trustees' authority to acquire property by lease-purchase agreement, 20-6-609.

20-9-214. Fees. (1) The trustees of a district may:

(a) require pupils in the commercial, industrial arts, music, domestic science, scientific, or agricultural courses to pay reasonable fees to cover the actual cost of breakage and of excessive supplies used; and

(b) charge pupils a reasonable fee for a course or activity not reasonably related to a recognized academic and educational goal of the district or a course or activity held outside normal school functions. The trustees may waive the fee in cases of financial hardship.

(2) The fees collected pursuant to subsection (1)(a) must be deposited in the general fund, and the fees collected pursuant to subsection (1)(b) must be deposited in a nonbudgeted fund as provided in 20-9-210.

History: En. 75-6322 by Sec. 135, Ch. 5, L. 1971; R.C.M. 1947, 75-6322; amd. Sec. 1, Ch. 486, L. 1985; amd. Sec. 22, Ch. 767, L. 1991.

20-9-215. Destruction of certain financial records. Any claim, warrant, voucher, bond, or treasurer's general receipt may be destroyed by any county or school district officer after a period of 5 years.

History: En. Sec. 4, Ch. 92, L. 1935; re-en. Sec. 455.4, R.C.M. 1935; amd. Sec. 12, Ch. 189, L. 1953; amd. Sec. 1, Ch. 90, L. 1963; amd. Sec. 1, Ch. 95, L. 1967; R.C.M. 1947, 59-516; amd. Sec. 5, Ch. 384, L. 1979; amd. Sec. 3, Ch. 543, L. 1983.

Cross-References

Destruction of old records by officer, 20-1-212.

20-9-216 through 20-9-219 reserved.

20-9-220. Clearing accounts. (1) A clearing account may be used by a school district for bookkeeping purposes if:

(a) all funds from the account are disbursed through issuance of warrants as provided in 20-9-221;

(b) records are kept showing the source and use of the funds that passed through the account; and

(c) the balance in the account is no greater than the amount necessary to cover outstanding warrants written against the account.

(2) An elementary school district and a high school district that are unified may use the same clearing account if the account is maintained in accordance with rules adopted by the superintendent of public instruction.

(3) Nothing in this section may be construed to allow the use of funds for any purpose or in any manner other than that expressly authorized in this title.

History: En. Sec. 1, Ch. 263, L. 1987.

20-9-221. Procedure for issuance of warrants. (1) The trustees of each district shall issue all warrants, and the warrants must identify the fund on which the warrant is drawn.

(2) All warrants issued by a district must be countersigned by the presiding officer of the trustees and the clerk of the district before the warrants are negotiable. Facsimile signatures may be used in accordance with the provisions of 2-16-114. A facsimile signature device used under authority of this section may not be available to the other countersigner of the warrant, or the device must have a nonresettable metering control that can provide a positive reconciliation between the number of warrants issued and the number of signatures applied. Either split signature plates or a double signature plate may be used according to the requirements of the district. The signature plates and the device keys must be kept secure by the district clerk under the supervision of the board of trustees of the district.

(3) The trustees may issue warrants in multiple copies. If multiple copies are issued, the copies must be identified on the face of the warrant as "Not Negotiable—Copy of Original".

(4) However, the trustees may elect to issue warrants in payment of wages and salaries on a direct deposit basis to the employee's account in a local bank, provided the consent of the employee has been obtained and the employee is given an itemized statement of payroll deductions for each pay period.

History: En. 75-6810 by Sec. 246, Ch. 5, L. 1971; amd. Sec. 1, Ch. 341, L. 1971; amd. Sec. 2, Ch. 241, L. 1973; R.C.M. 1947, 75-6810; amd. Sec. 1, Ch. 279, L. 1979; amd. Sec. 1, Ch. 43, L. 1989; amd. Sec. 23, Ch. 767, L. 1991; amd. Sec. 7, Ch. 260, L. 1995.

Cross-References

County warrants, Title 7, ch. 6, part 26.

20-9-222. Repealed. Sec. 12, Ch. 260, L. 1995.

History: En. 75-6811 by Sec. 247, Ch. 5, L. 1971; amd. Sec. 3, Ch. 241, L. 1973; R.C.M. 1947, 75-6811.

20-9-223. Cancellation of outstanding warrants — duplication. The trustees of any school district shall be authorized to cancel any warrant that has been issued for at least 1 year. However, the contractual obligation of the district that has been satisfied by the issuance of the warrant shall not be terminated until the time specified by 27-2-202(1) has elapsed. When a warrant has been canceled and the obligation has not terminated under 27-2-202(1), the district may issue a duplicate warrant without the completion of an indemnity bond by the payee.

History: En. Sec. 1, Ch. 365, L. 1973; R.C.M. 1947, 75-6811.1.

20-9-224. Repealed. Sec. 12, Ch. 260, L. 1995.

History: En. 75-6811.2 by Sec. 1, Ch. 329, L. 1977; R.C.M. 1947, 75-6811.2; amd. Sec. 1, Ch. 83, L. 1979.

20-9-225. Definitions relating to interest assessment. As used in 20-9-226 and 20-9-227, the following definitions apply:

(1) "Services" means the furnishing of labor, time, or effort, including construction services, purchased or contracted for by a school district.

(2) "Supplies" means all personal property purchased, leased, or contracted for by a school district, including leases of equipment. The term also includes leases of buildings or other real property by a school district.

History: En. Sec. 4, Ch. 413, L. 1985.

20-9-226. Interest assessed on amounts due. (1) Except as provided in 20-9-227, a school district shall pay simple interest at the rate of 0.05% each day on amounts due for supplies and services received if the district fails to make timely payment.

(2) For purposes of this section, payment is timely if a warrant is mailed or is otherwise made available to the payee when due and for the amount specified in the applicable contract or agreement. If no date is specified in the applicable contract or agreement, payment is timely if paid within 45 days after receipt of a properly completed invoice, addressed to the payer school district, or receipt of the supplies or services by the school district, whichever is later.

History: En. Sec. 5, Ch. 413, L. 1985.

20-9-227. Exemptions from interest assessment. Section 20-9-226 does not apply to the following:

- (1) third-class school districts where the board of trustees does not meet monthly;
- (2) interdistrict or intergovernmental transactions;
- (3) claims subject to a good faith dispute;
- (4) delinquencies due to natural disasters, disruptions in postal or delivery service, work stoppage due to labor disputes, power failures, or any other cause resulting from circumstances clearly beyond the control of the district;
- (5) contracts entered into before October 1, 1985; or
- (6) wages due and payable to school district employees or payments from any retirement system created pursuant to Title 19.

History: En. Sec. 6, Ch. 413, L. 1985.

20-9-228 through 20-9-230 reserved.

20-9-231. Metal mines tax reserve fund. (1) The governing body of a local school district receiving tax collections under 15-37-117(1)(e) may establish a metal mines tax reserve fund to be used to hold the collections. The governing body may hold money in the fund for any time period considered appropriate by the governing body. Money held in the fund may not be considered as fund balance for the purpose of reducing mill levies.

- (2) Money may be expended from the fund for any purpose provided by law.
- (3) Money in the fund must be invested as provided by law. Interest and income from the investment of the metal mines tax reserve fund must be credited to the fund.
- (4) The fund must be financially administered as a nonbudgeted fund under the provisions of this title.

History: En. Sec. 18, Ch. 672, L. 1989; amd. Sec. 24, Ch. 767, L. 1991; amd. Sec. 7, Ch. 577, L. 1995; amd. Sec. 6, Ch. 144, L. 1999.

20-9-232 through 20-9-234 reserved.

20-9-235. Authorization for school district investment account. (1) The trustees of a school district may establish investment accounts and may temporarily transfer into the accounts all or a portion of any of its budgeted or nonbudgeted funds.

(2) Money transferred into investment accounts established under this section may be expended from a subsidiary checking account under the conditions specified in subsection (3)(b).

(3) The district may either:

(a) establish and use the accounts as nonspending accounts to ensure that district funds remain in an interest-bearing status until money is reverted to the budgeted or nonbudgeted fund of original deposit as necessary for use by the county treasurer to pay claims against the district. The district shall ensure that sufficient money is reverted to the district's budgeted and nonbudgeted funds maintained by the county treasurer in sufficient time to pay all claims presented against the applicable funds of the district. The county treasurer shall accept all money that is reverted upon tendered transfer of the district.

(b) establish a subsidiary checking account for expenditures from the investment accounts. The district may write checks on or provide electronic payments from the account if:

(i) the payments made from the accounts representing budgeted funds are in compliance with the budget adopted by the trustees;

(ii) the accounts are subject to the audit of district finances completed for compliance with 2-7-503 and 20-9-503; and

(iii) the district complies with all accounting system requirements required by the superintendent of public instruction.

(4) (a) A district that chooses to establish a school district investment account described in this section shall enter into a written agreement with the county treasurer. The agreement must:

(i) establish specific procedures and reporting dates to comply with the requirements of subsection (3);

(ii) be binding upon the district and the county treasurer for a negotiated period of time;

(iii) be signed by the presiding officer of the board of trustees and the county treasurer; and

(iv) except as provided in subsection (4)(b), coincide with fiscal years beginning on July 1 and ending on June 30.

(b) An agreement that establishes a school district investment account for fiscal year 2002 must be entered into no later than October 1, 2001.

(c) The district and the county treasurer may renew an agreement, including terms and conditions on which they agree, provided that the terms and conditions comply with the provisions of this section.

(5) Except for debt service money that the county treasurer is required by law to collect and report to the districts, all other revenue may be sent directly to a participating district's investment account.

(6) The trustees shall implement an accounting system for the investment account pursuant to rules adopted by the superintendent of public instruction. The rules for the accounting system must include but are not limited to:

(a) providing for the internal control of deposits into and transfers between a district's investment accounts and budgeted and nonbudgeted funds of the district;

(b) requiring that the principal and interest earned on the principal is allocated to the budgeted or nonbudgeted fund from which the deposit was originally made; and

(c) ensuring that other proper accounting principles are followed.

(7) All interest earned on the district's general fund deposits must be allocated for district property tax reduction as required by 20-9-141.

(8) In making deposits to investment accounts under this section, a district shall comply with the requirements of Title 17, chapter 6, part 1, with respect to deposits in excess of the amount insured by the federal deposit insurance corporation or the national credit union administration, as applicable.

(9) A district establishing investment accounts under the section shall pay the automated clearinghouse system charges for all automated clearinghouse transfers made by the office of public instruction to the district's accounts.

History: En. Sec. 1, Ch. 205, L. 2001; amd. Sec. 1, Ch. 411, L. 2003.

Part 3 Funding of Basic System of Quality Public Schools

Part Cross-References

Legislature to provide free public education — equality of educational opportunity, Art. X, sec. 1, Mont. Const.

ANB defined, 20-1-101.

School fiscal year, 20-1-301.

Definition of various schools, 20-6-501.

20-9-301. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. 75-6901 by Sec. 251, Ch. 5, L. 1971; R.C.M. 1947, 75-6901; amd. Sec. 25, Ch. 11, Sp. L. June 1989; amd. Sec. 25, Ch. 767, L. 1991.

20-9-302. School isolation. (1) Except as provided in 20-6-502(4)(b), the trustees of any district operating an elementary school of less than 10 ANB or a high school of less than 25 ANB for 2 consecutive years shall apply to have the school classified as an isolated school. The application must be submitted by the trustees to the county superintendent by May 1 of the second consecutive year that enrollment falls below the amount specified in this subsection. The application must include:

(a) the name of each pupil who will attend the school during the ensuing school fiscal year with the distance the pupil resides from the nearest county road or highway;

(b) a description of conditions affecting transportation such as poor roads, mountains, rivers, or other obstacles to travel, the distance the school is from the nearest open school having room and facilities for the pupils of the school, or any other condition that would result in an unusual hardship to the pupils of the school if they were transported to another school; and

(c) any other information prescribed by the superintendent of public instruction.

(2) The county superintendent shall submit the applications to the board of county commissioners for their consideration on or before May 15. The board shall approve or disapprove the application on the basis of the criteria established by the superintendent of public instruction. The board may approve an application because of the existence of other conditions which would result in an unusual hardship to the pupils of the school if they were transported to another school.

(3) When an application is approved, the county superintendent shall submit the application to the superintendent of public instruction before June 1. The superintendent of public instruction shall approve or disapprove the application for isolated classification by the fourth Monday of June on the basis of the information supplied by the application or objective information the superintendent of public instruction may collect on the superintendent's own initiative. An elementary or high school may not be considered an isolated school until the approval of the superintendent of public instruction has been received.

History: En. 75-6608 by Sec. 206, Ch. 5, L. 1971; amd. Sec. 1, Ch. 212, L. 1973; R.C.M. 1947, 75-6608; amd. Sec. 1, Ch. 347, L. 1981; amd. Sec. 2, Ch. 105, L. 2001.

Cross-References

Abandonment of elementary district, 20-6-209.

Abandonment of high school district, 20-6-307.

20-9-303. Nonisolated school BASE budget funding — special education funds. (1)

An elementary school that has an ANB of nine or fewer pupils for 2 consecutive years and that is not approved as an isolated school under the provisions of 20-9-302 may budget and spend the BASE budget amount, but the county and state shall provide one-half of the direct state aid, and the district shall finance the remaining one-half of the direct state aid by a tax levied on the property of the district. When a school of nine or fewer pupils is approved as isolated under the provisions of 20-9-302, the county and state shall participate in the financing of the total amount of the direct state aid.

(2) Funds provided to support the special education program may be expended only for special education purposes as approved by the superintendent of public instruction in accordance with the special education budgeting provisions of this title. Expenditures for special education must be accounted for separately from and in addition to the balance of the school district general fund budgeting requirements provided in 20-9-308. The amount of the special education allowable cost payments that is not matched with district funds, as required in 20-9-321, will reduce by a like amount the district's ensuing year's allowable cost payment for special education.

History: En. 75-6906 by Sec. 256, Ch. 5, L. 1971; amd. Sec. 8, Ch. 137, L. 1973; amd. Sec. 2, Ch. 345, L. 1974; R.C.M. 1947, 75-6906; amd. Sec. 1, Ch. 317, L. 1981; amd. Sec. 2, Ch. 347, L. 1981; amd. Sec. 26, Ch. 11, Sp. L. June 1989; amd. Sec. 18, Ch. 633, L. 1993; amd. Sec. 5, Ch. 208, L. 2005.

Cross-References

Property tax levies, Title 15, ch. 10.

Special education for exceptional children, Title 20, ch. 7, part 4.

Schedule of allowable costs for determining maximum-budget-without-a-vote, 20-7-431.

20-9-304. Repealed. Sec. 3, Ch. 325, L. 1993.

History: En. 75-6925 by Sec. 275, Ch. 5, L. 1971; R.C.M. 1947, 75-6925; amd. Sec. 25, Ch. 609, L. 1987; amd. Sec. 1, Ch. 262, L. 1991.

20-9-305. Proration and calculation of BASE funding program for joint district.

(1) In joint districts, the direct state aid of a joint district must be prorated among the counties in which any part of the joint district is located for the purpose of determining the amount of each source of revenue for the direct state aid for which each county is obligated. The proration of the joint district direct state aid must be calculated as follows:

(a) Divide the joint district direct state aid by the ANB of the joint district to determine the per-ANB amount of the direct state aid.

(b) Determine the ANB for each county's portion of the joint district on the basis of each pupil's resident county. When taken together, the sum of the ANB assigned to all the counties must equal the total ANB for the joint district.

(c) Multiply the per-ANB amount of the direct state aid determined in subsection (1)(a) by the ANB for each county's portion, as determined in subsection (1)(b), to determine the portion of the direct state aid for each county.

(2) The portion of a joint district direct state aid for each county, as determined in subsection (1)(c), is a separate direct state aid amount in the county for the purposes of calculating the various revenues for the BASE funding program. After the calculation of the direct state aid revenues, the remainder of the general fund revenues must be calculated in accordance with the provisions for general fund financing.

History: En. 75-6927 by Sec. 277, Ch. 5, L. 1971; amd. Sec. 13, Ch. 137, L. 1973; R.C.M. 1947, 75-6927; amd. Sec. 19, Ch. 633, L. 1993.

20-9-306. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

- (1) "BASE" means base amount for school equity.
- (2) "BASE aid" means:
 - (a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district;
 - (b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and 40% of the special education allowable cost payment;
 - (c) the total quality educator payment;
 - (d) the total at-risk student payment;
 - (e) the total Indian education for all payment; and
 - (f) the total American Indian achievement gap payment.
- (3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, 100% of the total quality educator payment, 100% of the total at-risk student payment, 100% of the total Indian education for all payment, 100% of the total American Indian achievement gap payment, and 140% of the special education allowable cost payment.
- (4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.
- (5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.
- (6) "Basic entitlement" means:
 - (a) for each high school district:
 - (i) \$236,552 for fiscal year 2008; and
 - (ii) \$243,649 for each succeeding fiscal year;
 - (b) for each elementary school district or K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school:
 - (i) \$21,290 for fiscal year 2008;
 - (ii) \$21,922 for each succeeding fiscal year; and
 - (c) for each elementary school district or K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school:
 - (i) for kindergarten through grade 6 elementary program:
 - (A) \$21,290 for fiscal year 2008; and
 - (B) \$21,922 for each succeeding fiscal year; plus
 - (ii) for an approved and accredited junior high school program, 7th and 8th grade program, or middle school:
 - (A) \$60,275 for fiscal year 2008; and
 - (B) \$62,083 for each succeeding fiscal year.
- (7) "Budget unit" means the unit for which the ANB of a district is calculated separately pursuant to 20-9-311.
- (8) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.
- (9) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, the total American Indian achievement gap payment, and the greater of:
 - (a) 175% of special education allowable cost payments; or

(b) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

(10) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(11) "Total American Indian achievement gap payment" means the payment resulting from multiplying \$200 times the number of American Indian students enrolled in the district as provided in 20-9-330.

(12) "Total at-risk student payment" means the payment resulting from the distribution of any funds appropriated for the purposes of 20-9-328.

(13) "Total Indian education for all payment" means the payment resulting from multiplying \$20.40 times the ANB of the district or \$100 for each district, whichever is greater, as provided for in 20-9-329.

(14) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations and using either the current year ANB or the 3-year ANB provided for in 20-9-311:

(a) for a high school district or a K-12 district high school program, a maximum rate of \$5,861 for fiscal year 2008 and \$6,037 for each succeeding fiscal year for the first ANB, decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school, a maximum rate of \$4,579 for fiscal year 2008 and \$4,716 for each succeeding fiscal year for the first ANB, decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school, the sum of:

(i) a maximum rate of \$4,579 for fiscal year 2008 and \$4,716 for each succeeding fiscal year for the first ANB for kindergarten through grade 6, decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of \$5,861 for fiscal year 2008 and \$6,037 for each succeeding fiscal year for the first ANB for grades 7 and 8, decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB.

(15) "Total quality educator payment" means the payment resulting from multiplying \$3,036 for fiscal year 2008 and \$3,042 for each succeeding fiscal year times the number of full-time equivalent educators as provided in 20-9-327.

History: En. Sec. 1, Ch. 633, L. 1993; amd. Sec. 1, Ch. 38, Sp. L. November 1993; amd. Secs. 1, 2, Ch. 437, L. 1997; amd. Sec. 1, Ch. 211, L. 1999; amd. Sec. 8, Ch. 11, Sp. L. May 2000; amd. Secs. 1, 2, Ch. 231, L. 2001; amd. Secs. 1, 2, Ch. 556, L. 2001; amd. Secs. 2, 3, Ch. 550, L. 2003; amd. Secs. 10, 11, Ch. 462, L. 2005; amd. Sec. 7, Ch. 4, Sp. L. December 2005; amd. Sec. 12, Ch. 1, Sp. L. May 2007.

Compiler's Comments

2007 Special Session Amendment: Chapter 1 in definition of basic entitlement in (a) at beginning deleted "\$230,199", inserted (a)(i) and (a)(ii) specifying amounts for fiscal year 2008 and each succeeding fiscal year, in (b) at beginning deleted "\$20,718" and inserted reference to 7th and 8th grade program, inserted (b)(i) and (b)(ii) specifying amounts for fiscal year 2008 and each succeeding fiscal year, in (c) at beginning deleted "the prorated entitlement", inserted reference to 7th and 8th grade program, and at end after "middle school" deleted "calculated as follows using either the current year ANB or the 3-year ANB provided for in 20-9-311", in (c)(i) substituted "for kindergarten through grade 6 elementary program" for "\$20,718 times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8", inserted (c)(i)(A) and (c)(i)(B) specifying amounts for fiscal year 2008 and each succeeding fiscal year, and in (c)(ii) substituted introductory clause and (c)(ii)(A) and (c)(ii)(B) relating to funding for junior high school program, 7th and 8th grade program, or middle school for "\$230,199 times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8"; in definition of total per-ANB entitlement in (a) substituted "\$5,861 for fiscal year 2008 and \$6,037 for each succeeding fiscal year" for "\$5,704", in (b) after "junior high school" inserted reference to 7th and 8th grade program and substituted "\$4,579 for fiscal year

2008 and \$4,716 for each succeeding fiscal year" for "\$4,456", in (c) after "junior high school" inserted reference to 7th and 8th grade program, and in (c)(i) near beginning substituted "\$4,579 for fiscal year 2008 and \$4,716 for each succeeding fiscal year" for "\$4,456", and in (c)(ii) near beginning substituted "\$5,861 for fiscal year 2008 and \$6,037 for each succeeding fiscal year" for "\$5,704"; in definition of total quality educator payment substituted "\$3,036 for fiscal year 2008 and \$3,042 for each succeeding fiscal year" for "\$2,000"; and made minor changes in style. Amendment effective July 1, 2007.

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

2005 Special Session Amendment — Code Commissioner Clarification: (Version effective July 1, 2006) Chapter 4 in definition of BASE aid inserted (c) concerning the total quality educator payment, (d) concerning the total at-risk student payment, (e) concerning the total Indian education for all payment, and (f) concerning the total American Indian achievement gap payment; in definition of BASE budget near middle inserted references to the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, and the total American Indian achievement gap payment; in definition of maximum general fund budget near end of introductory clause inserted references to the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, and the total American Indian achievement gap payment; and inserted definitions of total American Indian achievement gap payment, total at-risk student payment, total Indian education for all payment, and total quality educator payment. Amendment effective July 1, 2006.

(Former July 1, 2007, version) In definition of basic entitlement in (a) and (c)(ii) increased entitlement from \$220,646 to \$230,199, in (b) and (c)(i) increased entitlement from \$19,859 to \$20,718, and in (c) at end after "follows" inserted "using either the current year ANB or the 3-year ANB provided for in 20-9-311"; inserted definition of budget unit; in definition of total per-ANB entitlement in introductory clause at end after "calculations" inserted "and using either the current year ANB or the 3-year ANB provided for in 20-9-311", in (a) and (c)(ii) increased rate from \$5,371 to \$5,704, and in (b) and (c)(i) increased rate from \$4,031 to \$4,456; and made minor changes in style.

Because the effect of the amendments to the July 1, 2007, version was to make the section identical to the July 1, 2006, version, the code commissioner has not codified the July 1, 2007, version. The amendments also rendered the termination date provided in sec. 25(2), Ch. 462, L. 2005, ineffective.

Effective Date — Applicability: Section 15, Ch. 4, Sp. L. December 2005, provided: "[This act] is effective July 1, 2006, and applies to school budgets for school fiscal years beginning on or after July 1, 2006."

20-9-307. Repealed. Sec. 6, Ch. 208, L. 2005.

History: En. Sec. 2, Ch. 633, L. 1993; amd. Sec. 9, Ch. 343, L. 1999.

20-9-308. BASE budgets and maximum general fund budgets. (1) (a) The trustees of a district shall adopt a general fund budget that is at least equal to the BASE budget established for the district. The trustees of a district may adopt a general fund budget up to the maximum general fund budget or the previous year's general fund budget, whichever is greater.

(b) For purposes of the budget limitation in subsection (1)(a), the trustees may add any increase in state funding for the general fund payments in 20-9-327 through 20-9-330 to the district's previous year's general fund budget.

(2) Whenever the trustees of a district propose to adopt a general fund budget that exceeds the BASE budget for the district and to increase the over-BASE budget levy to support the general fund budget, the trustees shall submit a proposition to the electors of the district, as provided in 20-9-353.

(3) The BASE budget for the district must be financed by the following sources of revenue:

(a) state equalization aid, as provided in 20-9-343, including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

(c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;

(d) payments in support of special education programs under the provisions of 20-9-321;

(e) nonlevy revenue, as provided in 20-9-141; and

(f) a BASE budget levy on the taxable value of all property within the district.

(4) The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district, as provided in 20-9-141.

History: En. Sec. 3, Ch. 633, L. 1993; amd. Sec. 2, Ch. 38, Sp. L. November 1993; amd. Secs. 6, 10(2), Ch. 514, L. 1999; amd. Sec. 1, Ch. 146, L. 2001; amd. Sec. 15, Ch. 237, L. 2001; amd. Sec. 1, Ch. 190, L. 2005; amd. Sec. 12, Ch. 462, L. 2005; amd. Sec. 2, Ch. 173, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 173 in (1)(a) at end of first sentence deleted "and, except as provided in subsection (3), does not exceed the maximum general fund budget established for the district" and inserted second sentence concerning adoption of budget that is greater of maximum general fund budget or previous year's general fund budget; inserted (1)(b) concerning adding increase in state funding to previous year's budget; in (2) near beginning

after “district” inserted “propose to” and near middle substituted “and to increase the over-BASE budget levy to support the general fund budget” for “but does not exceed the maximum general fund budget for the district”; deleted former (3) that read: “(3) (a) (i) Except as provided in subsection (3)(a)(ii), the trustees of a school district whose previous year’s general fund budget exceeds the current year’s maximum general fund budget amount may adopt a general fund budget up to the maximum general fund budget amount or the previous year’s general fund budget, whichever is greater. A school district may adopt a budget under the criteria of this subsection (3)(a)(i) for a maximum of 5 consecutive years, but the trustees shall adopt a plan to reach the maximum general fund budget by no later than the end of the 5-year period. A school district whose adopted general fund budget for the previous year exceeds the maximum general fund budget for the current year and whose ANB for the previous year exceeds the ANB for the current year by 30% or more shall reduce its adopted budget by:

(A) in the first year, 20% of the range between the district’s adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(B) in the second year, 25% of the range between the district’s adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(C) in the third year, 33.3% of the range between the district’s adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(D) in the fourth year, 50% of the range between the district’s adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year; and

(E) in the fifth year, the remainder of the range between the district’s adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year.

(ii) The trustees of a district whose general fund budget was above the maximum general fund budget established by Chapter 38, Special Laws of November 1993, and whose general fund budget has continued to exceed the district’s maximum general fund budget in each school fiscal year after school fiscal year 1993 may continue to adopt a general fund budget that exceeds the maximum general fund budget. However, the budget adopted for the current year may not exceed the lesser of:

(A) the adopted budget for the previous year; or

(B) the district’s maximum general fund budget for the current year plus the over maximum budget amount adopted for the previous year.

(b) The trustees of the district shall submit a proposition to raise any general fund budget amount that is in excess of the maximum general fund budget for the district to the electors who are qualified under 20-20-301 to vote on the proposition, as provided in 20-9-353”; and made minor changes in style. Amendment effective April 10, 2007.

Retroactive Applicability: Section 5, Ch. 173, L. 2007, provided: “[Sections 1 and 2] [20-9-141 and 20-9-308] apply retroactively, within the meaning of 1-2-109, to actions taken by the trustees of a school district on or after March 1, 2007, in preparing school budgets for the 2008 school fiscal year, including but not limited to setting, scheduling, and holding general fund levy elections.”

20-9-309. Basic system of free quality public elementary and secondary schools defined — identifying educationally relevant factors — establishment of funding formula and budgetary structure — legislative review. (1) Pursuant to Article X, section 1, of the Montana constitution, the legislature is required to provide a basic system of free quality public elementary and secondary schools throughout the state of Montana that will guarantee equality of educational opportunity to all.

(2) As used in this section, a “basic system of free quality public elementary and secondary schools” means:

(a) the educational program specified by the accreditation standards provided for in 20-7-111, which represent the minimum standards upon which a basic system of free quality public elementary and secondary schools is built;

(b) educational programs to provide for students with special needs, such as:

(i) a child with a disability, as defined in 20-7-401;

(ii) an at-risk student;

(iii) a student with limited English proficiency;

(iv) a child who is qualified for services under 29 U.S.C. 794; and

(v) gifted and talented children, as defined in 20-7-901;

(c) educational programs to implement the provisions of Article X, section 1(2), of the Montana constitution and Title 20, chapter 1, part 5, through development of curricula designed to integrate the distinct and unique cultural heritage of American Indians into the curricula, with particular emphasis on Montana Indians;

(d) qualified and effective teachers or administrators and qualified staff to implement the programs in subsections (2)(a) through (2)(c);

(e) facilities and distance learning technologies associated with meeting the accreditation standards;

(f) transportation of students pursuant to Title 20, chapter 10;

(g) a procedure to assess and track student achievement in the programs established pursuant to subsections (2)(a) through (2)(c); and

(h) preservation of local control of schools in each district vested in a board of trustees pursuant to Article X, section 8, of the Montana constitution.

(3) In developing a mechanism to fund the basic system of free quality public elementary and secondary schools and in making adjustments to the funding formula, the legislature shall, at a minimum, consider the following educationally relevant factors:

- (a) the number of students in a district;
- (b) the needs of isolated schools with low population density;
- (c) the needs of urban schools with high population density;
- (d) the needs of students with special needs, such as a child with a disability, an at-risk student, a student with limited English proficiency, a child who is qualified for services under 29 U.S.C. 794, and gifted and talented children;
- (e) the needs of American Indian students; and
- (f) the ability of school districts to attract and retain qualified educators and other personnel.

(4) By July 1, 2007, the legislature shall:

(a) determine the costs of providing the basic system of free quality public elementary and secondary schools;

(b) establish a funding formula that:

(i) is based on the definition of a basic system of free quality public elementary and secondary schools and reflects the costs associated with providing that system as determined in subsection (4)(a);

(ii) allows the legislature to adjust the funding formula based on the educationally relevant factors identified in this section;

(iii) is self-executing and includes a mechanism for annual inflationary adjustments;

(iv) is based on state laws;

(v) is based on federal education laws consistent with Montana's constitution and laws; and

(vi) distributes to school districts in an equitable manner the state's share of the costs of the basic system of free quality public elementary and secondary schools; and

(c) consolidate the budgetary fund structure to create the number and types of funds necessary to provide school districts with the greatest budgetary flexibility while ensuring accountability and efficiency.

(5) At least every 10 years following April 7, 2005, the legislature shall:

(a) authorize a study to reassess the educational needs and costs related to the basic system of free quality public elementary and secondary schools; and

(b) if necessary, incorporate the results of those assessments into the state's funding formula.

History: En. Sec. 2, Ch. 208, L. 2005.

20-9-310 reserved.

20-9-311. Calculation of average number belonging (ANB) — three-year averaging. (1) Average number belonging (ANB) must be computed for each budget unit as follows:

(a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior school fiscal year, or the next school day if those dates do not fall on a school day, and divide the sum by two; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of 180 and the approved pupil-instruction-related days for the current school fiscal year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than the minimum aggregate hours under 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) (a) For the purpose of calculating ANB, enrollment in an education program:

(i) from 180 to 359 aggregate hours of pupil instruction per school year is counted as one-quarter-time enrollment;

(ii) from 360 to 539 aggregate hours of pupil instruction per school year is counted as half-time enrollment;

(iii) from 540 to 719 aggregate hours of pupil instruction per school year is counted as three-quarter-time enrollment; and

(iv) 720 or more aggregate hours of pupil instruction per school year is counted as full-time enrollment.

(b) Enrollment in a program intended to provide fewer than 180 aggregate hours of pupil instruction per school year may not be included for purposes of ANB.

(c) Enrollment in a self-paced program or course may be converted to an hourly equivalent based on the hours necessary and appropriate to provide the course within a regular classroom schedule.

(d) A pupil in kindergarten through grade 12 who is concurrently enrolled in more than one public school, program, or district may not be counted as more than one full-time pupil for ANB purposes.

(5) For a district that is transitioning from a half-time to a full-time kindergarten program, the state superintendent shall count kindergarten enrollment in the previous year as full-time enrollment for the purpose of calculating ANB for the elementary programs offering full-time kindergarten in the current year. For the purposes of calculating the 3-year ANB, the superintendent of public instruction shall count the kindergarten enrollment as one-half enrollment and then add the additional kindergarten ANB to the 3-year average ANB for districts offering full-time kindergarten.

(6) When a pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) The enrollment of preschool pupils, as provided in 20-7-117, may not be included in the ANB calculations.

(8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that the ANB is calculated as a separate budget unit when:

(a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time pupils of the school must be calculated as a separate budget unit for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and incorporated territory is not involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iv) two or more districts consolidate or annex under the provisions of 20-6-422 or 20-6-423, the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional years as follows:

(A) 75% of the basic entitlement for the fourth year;

(B) 50% of the basic entitlement for the fifth year; and

(C) 25% of the basic entitlement for the sixth year.

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(9) The district shall provide the superintendent of public instruction with semiannual reports of school attendance, absence, and enrollment for regularly enrolled students, using a format determined by the superintendent.

(10) (a) Except as provided in subsections (10)(b) and (10)(c), enrollment in a basic education program provided by the district through any combination of onsite or offsite instruction may be included for ANB purposes only if the pupil is offered access to the complete range of educational services for the basic education program required by the accreditation standards adopted by the board of public education.

(b) Access to school programs and services for a student placed by the trustees in a private program for special education may be limited to the programs and services specified in an approved individual education plan supervised by the district.

(c) Access to school programs and services for a student who is incarcerated in a facility, other than a youth detention center, may be limited to the programs and services provided by the district at district expense under an agreement with the incarcerating facility.

(d) This subsection (10) may not be construed to require a school district to offer access to activities governed by an organization having jurisdiction over interscholastic activities, contests, and tournaments to a pupil who is not otherwise eligible under the rules of the organization.

(11) A district may include only, for ANB purposes, an enrolled pupil who is otherwise eligible under this title and who is:

(a) a resident of the district or a nonresident student admitted by trustees under a student attendance agreement and who is attending a school of the district;

(b) unable to attend school due to a medical reason certified by a medical doctor and receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;

(c) unable to attend school due to the student's incarceration in a facility, other than a youth detention center, and who is receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;

(d) receiving special education and related services, other than day treatment, under a placement by the trustees at a private nonsectarian school or private program if the pupil's services are provided at the district's expense under an approved individual education plan supervised by the district;

(e) participating in the running start program at district expense under 20-9-706;

(f) receiving educational services, provided by the district, using appropriately licensed district staff at a private residential program or private residential facility licensed by the department of public health and human services;

(g) enrolled in an educational program or course provided at district expense using electronic or offsite delivery methods, including but not limited to tutoring, distance learning programs, online programs, and technology delivered learning programs, while attending a school of the district or any other nonsectarian offsite instructional setting with the approval of the trustees of the district. The pupil shall:

(i) meet the residency requirements for that district as provided in 1-1-215;

(ii) live in the district and must be eligible for educational services under the Individuals With Disabilities Education Act or under 29 U.S.C. 794; or

(iii) attend school in the district under a mandatory attendance agreement as provided in 20-5-321.

(h) a resident of the district attending a Montana job corps program under an interlocal agreement with the district under 20-9-707.

(12) (a) For an elementary or high school district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated using the current year ANB for all budget units or the 3-year average ANB for all budget units, whichever generates the greatest maximum general fund budget.

(b) For a K-12 district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated separately for the elementary and high school programs pursuant to subsection (12)(a) and then combined.

(13) The term "3-year ANB" means an average ANB over the most recent 3-year period, calculated by:

(a) adding the ANB for the budget unit for the ensuing school fiscal year to the ANB for each of the previous 2 school fiscal years; and

(b) dividing the sum calculated under subsection (13)(a) by three.

History: En. 75-6902 by Sec. 252, Ch. 5, L. 1971; amd. Sec. 1, Ch. 345, L. 1973; amd. Sec. 1, Ch. 343, L. 1974; amd. Sec. 3, Ch. 352, L. 1974; amd. Sec. 1, Ch. 373, L. 1974; amd. Sec. 1, Ch. 132, L. 1975; R.C.M. 1947, 75-6902(part); amd. Sec. 8, Ch. 288, L. 1979; amd. Sec. 1, Ch. 498, L. 1987; amd. Sec. 6, Ch. 337, L. 1989; amd. Sec. 27, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 250, L. 1991; amd. Secs. 20, 33, Ch. 633, L. 1993; amd. Sec. 1, Ch. 212, L. 1997; amd. Sec. 7, Ch. 430, L. 1997; amd. Sec. 10, Ch. 343, L. 1999; amd. Sec. 1, Ch. 252, L. 2001; amd. Sec. 11, Ch. 138, L. 2005; amd. Sec. 3, Ch. 215, L. 2005; amd. Sec. 13, Ch. 462, L. 2005; amd. Sec. 11, Ch. 510, L. 2005; amd. Sec. 8, Ch. 4, Sp. L. December 2005; amd. Sec. 13, Ch. 1, Sp. L. May 2007.

Compiler's Comments

2007 Special Session Amendment: Chapter 1 in (1) near end of introductory clause inserted "for each budget unit"; in (4)(a) at beginning deleted "Except as provided in subsection (5)"; in (4)(a)(i) near beginning substituted "180" for "181"; in (4)(d) near beginning substituted "kindergarten through grade 12" for "grades 1 through 12"; substituted (5) concerning district transitioning to full-time kindergarten for former (5) that read: "(5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), enrollment in a program that provides 360 or more aggregate hours of pupil instruction per school year must be counted as one-half pupil for ANB purposes"; in (7) substituted "preschool pupils" for "prekindergarten pupils"; in (8) near end inserted "the ANB is calculated as a separate budget unit"; in (8)(a)(i) near middle after "must be calculated" substituted "as a separate budget unit" for "separately"; and made minor changes in style. Amendment effective July 1, 2007.

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

2005 Special Session Amendment: (Version effective July 1, 2006) Chapter 4 in (12)(a) and (12)(b) near middle after "ensuing" inserted "school fiscal"; and made minor changes in style. Amendment effective July 1, 2006.

(Version effective July 1, 2007) Inserted (12) providing method of calculating a district's maximum general fund budget for elementary, high school, or K-12 districts that have been in existence for 3 or more years; and inserted (13) defining 3-year ANB and providing a method of calculating the 3-year ANB.

Effective Date — Applicability: Section 15, Ch. 4, Sp. L. December 2005, provided: "[This act] is effective July 1, 2006, and applies to school budgets for school fiscal years beginning on or after July 1, 2006."

Cross-References

School fiscal year, 20-1-301.

Released time for religious purposes to be counted as part of school day, 20-1-308.

Preschool program to be included in calculation of ANB, 20-7-117.

20-9-312. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. 75-6905.1 by Sec. 1, Ch. 354, L. 1974; R.C.M. 1947, 75-6905.1; amd. Sec. 1, Ch. 340, L. 1979; amd. Sec. 28, Ch. 11, Sp. L. June 1989.

20-9-313. Circumstances under which regular average number belonging may be increased. (1) The average number belonging of a school, calculated in accordance with the ANB formula prescribed in 20-9-311, may be increased when:

(a) the opening of a new elementary school or the reopening of an elementary school has been approved in accordance with 20-6-502. The average number belonging for the school must be established by the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction.

(b) the opening or reopening of a high school or a branch of the county high school has been approved in accordance with 20-6-503, 20-6-504, or 20-6-505. The average number belonging for the high school must be established by the county superintendent's estimate, after an investigation of the probable number of pupils that will attend the high school.

(c) a district anticipates an increase in the average number belonging due to the closing of a private or public school in the district or a neighboring district. The estimated increase in average number belonging must be established by the trustees and the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June.

(d) a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average number belonging must be based on estimates of increased enrollment approved by the superintendent of public instruction and must be computed in the manner prescribed by 20-9-314.

(e) for the initial year of operation of a kindergarten program established under 20-7-117(1), the ANB to be used for budget purposes is:

(i) one-half the number of 5-year-old children residing in the district as of September 10 of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction, for the purpose of implementing a half-time kindergarten program as provided in 20-1-301; or

(ii) the number of 5-year-old children residing in the district as of September 10 of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction, for the purpose of implementing a full-time kindergarten program as provided in 20-1-301; or

(f) a high school district provides early graduation for a student who completes graduation requirements in less than eight semesters or the equivalent amount of secondary school enrollment. The increase must be established by the trustees as though the student had attended to the end of the school fiscal year and must be approved, disapproved, or adjusted by the superintendent of public instruction.

(2) This section does not apply to the expansion of a half-time kindergarten program to a full-time kindergarten program.

History: En. 75-6903 by Sec. 253, Ch. 5, L. 1971; amd. Sec. 4, Ch. 345, L. 1973; amd. Sec. 2, Ch. 343, L. 1974; amd. Sec. 1, Ch. 141, L. 1975; R.C.M. 1947, 75-6903; amd. Sec. 4, Ch. 334, L. 1979; amd. Sec. 2, Ch. 148, L. 1981; amd. Sec. 7, Ch. 337, L. 1989; amd. Sec. 6, Ch. 466, L. 1993; amd. Sec. 11, Ch. 343, L. 1999; amd. Sec. 14, Ch. 1, Sp. L. May 2007.

Compiler's Comments

2007 Special Session Amendment: Chapter 1 in (1)(e) in introductory clause inserted "kindergarten"; in (1)(e)(i) after "public instruction" inserted "for the purpose of implementing a half-time kindergarten program as provided in 20-1-301"; inserted (1)(e)(ii) concerning number of 5-year-old children residing in the district for implementing a full-time kindergarten program; inserted (2) making section inapplicable to expansion of half-time kindergarten; and made minor changes in style. Amendment effective July 1, 2007.

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

20-9-314. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase. A district that anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in 20-9-313(1)(d), may increase its basic entitlement and total per-ANB entitlement for the ensuing school fiscal year in accordance with the following provisions:

(1) Prior to June 1, the district shall estimate the elementary or high school enrollment to be realized during the ensuing school fiscal year, based on as much factual information as may be available to the district.

(2) No later than June 1, the district shall submit its application for an unusual enrollment increase by elementary or high school level to the superintendent of public instruction. The application must include:

(a) the enrollment for the current school fiscal year;

(b) the average number belonging used to calculate the basic entitlement and total per-ANB entitlement for the current school fiscal year;

(c) the average number belonging that will be used to calculate the basic entitlement and total per-ANB entitlement for the ensuing school fiscal year;

(d) the estimated enrollment, including the factual information on which the estimate is based, as provided in subsection (1); and

(e) any other information or data that may be requested by the superintendent of public instruction.

(3) The superintendent of public instruction shall immediately review all the factors of the application and shall approve or disapprove the application or adjust the estimated average number belonging for the ensuing ANB calculation period. After approving an estimate, with or without adjustment, the superintendent of public instruction shall:

(a) determine the percentage by which the estimated enrollment exceeds the enrollment used for the budgeted ANB; and

(b) approve an increase of the average number belonging used to establish the ensuing year's basic entitlement and total per-ANB entitlement in accordance with subsection (5) if the increase in subsection (3)(a) is at least 6%.

(4) The superintendent of public instruction shall notify the district of the decision by the fourth Monday in June.

(5) Whenever an unusual enrollment increase is approved by the superintendent of public instruction, the increase of the average number belonging used to establish the basic entitlement and total per-ANB entitlement for the ensuing ANB calculation period is determined using the difference between the enrollment for the ensuing school fiscal year and 106% of the enrollment used to calculate the budgeted ANB. The amount determined is the maximum allowable increase added to the average number belonging for the purpose of establishing the ensuing year's basic entitlement and total per-ANB entitlement.

(6) (a) Any entitlement increases resulting from provisions of this section must be reviewed at the end of the ensuing school fiscal year.

(b) If the actual enrollment is less than the enrollment used to determine the budgeted ANB, the superintendent of public instruction shall revise the total per-ANB entitlement and basic entitlement calculations, as provided in subsection (5), using the actual enrollment in place of the estimated enrollment. All total per-ANB entitlements received by the district in excess of the revised entitlements are overpayments subject to the refund provisions of 20-9-344(4).

History: En. 75-6904 by Sec. 254, Ch. 5, L. 1971; amd. Sec. 1, Ch. 113, L. 1973; R.C.M. 1947, 75-6904; amd. Sec. 1, Ch. 484, L. 1979; amd. Sec. 1, Ch. 203, L. 1981; amd. Sec. 8, Ch. 337, L. 1989; amd. Sec. 10, Ch. 555, L. 1991; amd. Sec. 21, Ch. 633, L. 1993; amd. Sec. 37, Ch. 18, L. 1995; amd. Sec. 19, Ch. 22, L. 1997; amd. Sec. 16, Ch. 237, L. 2001; amd. Sec. 14, Ch. 462, L. 2005; amd. Sec. 15, Ch. 1, Sp. L. May 2007.

Compiler's Comments

2007 Special Session Amendment: Chapter 1 in introductory clause substituted "20-9-313(1)(d)" for "20-9-313(4)"; in (3)(a) after "percentage" deleted "increase" and substituted "enrollment exceeds the enrollment used for budgeted ANB" for "enrollment increase exceeds the current enrollment"; in (5) in first sentence near middle inserted "determined using" and at end substituted "enrollment used to calculate the budgeted ANB" for "current enrollment"; in (6)(b) in first sentence substituted "the enrollment used to determine the budgeted ANB" for "the average number belonging used for BASE funding program and entitlement calculations", inserted "as provided in subsection (5)", and at end substituted "enrollment in place of the estimated enrollment" for "average number belonging"; and made minor changes in style. Amendment effective July 1, 2007.

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

20-9-315. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(part); amd. Sec. 1, Ch. 72, L. 1979; amd. Sec. 29, Ch. 11, Sp. L. June 1989; amd. Sec. 26, Ch. 767, L. 1991.

20-9-316. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(1) thru (6); amd. Sec. 1, Ch. 690, L. 1979; amd. Sec. 1, Ch. 75, L. 1981; amd. Secs. 2, 5, Ch. 475, L. 1983; amd. Sec. 1, Ch. 629, L. 1983; amd. Sec. 1, Ch. 738, L. 1985; amd. Sec. 1, Ch. 4, Sp. L. June 1989.

20-9-317. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(7) thru (9); amd. Sec. 2, Ch. 690, L. 1979; amd. Sec. 2, Ch. 75, L. 1981; amd. Sec. 2, Ch. 629, L. 1983; amd. Sec. 2, Ch. 738, L. 1985; amd. Sec. 2, Ch. 4, Sp. L. June 1989.

20-9-318. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(10) thru (15); amd. Sec. 3, Ch. 690, L. 1979; amd. Sec. 3, Ch. 75, L. 1981; amd. Secs. 3,

5, Ch. 475, L. 1983; amd. Sec. 3, Ch. 629, L. 1983; amd. Sec. 3, Ch. 738, L. 1985; amd. Sec. 1, Ch. 7, Sp. L. June 1986; amd. Sec. 3, Ch. 666, L. 1987; amd. Sec. 30, Ch. 11, Sp. L. June 1989.

20-9-319. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(16) thru (18); amd. Sec. 4, Ch. 690, L. 1979; amd. Sec. 4, Ch. 75, L. 1981; amd. Sec. 4, Ch. 629, L. 1983; amd. Sec. 4, Ch. 738, L. 1985; amd. Sec. 2, Ch. 7, Sp. L. June 1986; amd. Sec. 4, Ch. 666, L. 1987; amd. Sec. 31, Ch. 11, Sp. L. June 1989.

20-9-320. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(19); amd. Sec. 32, Ch. 11, Sp. L. June 1989.

20-9-321. Allowable cost payment for special education. (1) As used in this section, "ANB" means the current year ANB.

(2) The 3-year average ANB provided for in 20-9-311 does not apply to the calculation and distribution of state special education allowable cost payments provided for in this section.

(3) For the purpose of establishing the allowable cost payment for a current year special education program for a school district, the superintendent of public instruction shall determine the total special education payment to a school district, cooperative, or joint board for special education services formed under 20-3-361 prior to July 1, 1992, using the following factors:

(a) the district ANB student count as established pursuant to 20-9-311 and 20-9-313;

(b) a per-ANB amount for the special education instructional block grant;

(c) a per-ANB amount for the special education-related services block grant;

(d) an amount for cooperatives or joint boards meeting the requirements of 20-7-457, to compensate for the additional costs of operations and maintenance, travel, supportive services, recruitment, and administration; and

(e) any other data required by the superintendent of public instruction to administer the provisions of this section.

(4) (a) The total special education allocation must be distributed according to the following formula:

(i) 52.5% through instructional block grants;

(ii) 17.5% through related services block grants;

(iii) 25% to reimbursement of local districts; and

(iv) 5% to special education cooperatives and joint boards for administration and travel.

(b) Special education allowable cost payments outlined in subsection (4)(a) must be granted to each school district and cooperative with a special education program as follows:

(i) The instructional block grant limit prescribed in subsection (4)(a)(i) must be awarded to each school district, based on the district ANB and the per-ANB special education instructional amount.

(ii) The special education-related services block grant limit prescribed in subsection (4)(a)(ii) must be awarded to each school district that is not a cooperative member, based on the district ANB and the per-ANB special education-related services amount, or to a cooperative or joint board that meets the requirements of 20-7-457. The special education-related services block grant amount for districts that are members of approved cooperatives or a joint board must be awarded to the cooperatives or joint board.

(iii) If a district's allowable costs of special education exceed the total of the special education instructional and special education-related services block grant plus the required district match required by subsection (6), the district is eligible to receive at least a 40% reimbursement of the additional costs. To ensure that the total of reimbursements to all districts does not exceed 25% of the total special education allocation limit established in subsection (4)(a)(iii), reimbursement must be made to districts for amounts that exceed a threshold level calculated annually by the office of public instruction. The threshold level is calculated as a percentage amount above the sum of the district's block grants plus the required district match.

(iv) Of the amount distributed under subsection (4)(a)(iv), three-fifths must be distributed based on the ANB count of the school districts that are members of the special education cooperative or joint board and two-fifths must be distributed based on distances, population

density, and the number of itinerant personnel under rules adopted by the superintendent of public instruction.

(5) The superintendent of public instruction shall adopt rules necessary to implement this section.

(6) A district shall provide a 25% local contribution for special education, matching every \$3 of state special education instructional and special education-related services block grants with at least one local dollar. A district that is a cooperative member is required to provide the 25% match of the special education-related services grant amount to the special education cooperative.

(7) The superintendent of public instruction shall determine the actual district match based on the trustees' reports. Any unmatched portion reverts to the state and must be subtracted from the district's ensuing year's special education allowable cost payment.

(8) A district that demonstrates severe economic hardship because of exceptional special education costs may apply to the superintendent of public instruction for an advance on the reimbursement for the year in which the actual costs will be incurred.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(20) thru (22); amd. Sec. 1, Ch. 315, L. 1983; amd. Sec. 33, Ch. 11, Sp. L. June 1989; amd. Sec. 8, Ch. 249, L. 1991; amd. Sec. 27, Ch. 767, L. 1991; amd. Secs. 22, 23, Ch. 633, L. 1993; amd. Sec. 2, Ch. 145, L. 2001; amd. Sec. 15, Ch. 462, L. 2005; amd. Sec. 9, Ch. 4, Sp. L. December 2005.

Compiler's Comments

2005 Special Session Amendment — Code Commissioner Clarification: (Version effective July 1, 2006) Chapter 4 in (2) substituted "20-9-311" for "20-9-311(12)". Amendment effective July 1, 2006.

(Former July 1, 2007, version) Inserted (1) defining ANB as the current year ANB; inserted (2) providing that the 3-year average ANB does not apply to special education cost payment calculations; and made minor changes in style.

Because the effect of the amendments to the July 1, 2007, version was to make the section identical to the July 1, 2006, version, the code commissioner has not codified the July 1, 2007, version. The amendments also rendered the termination date provided in sec. 25(2), Ch. 462, L. 2005, ineffective.

Effective Date — Applicability: Section 15, Ch. 4, Sp. L. December 2005, provided: "[This act] is effective July 1, 2006, and applies to school budgets for school fiscal years beginning on or after July 1, 2006."

20-9-322. Repealed. Sec. 54, Ch. 633, L. 1993.

History: En. Sec. 1, Ch. 475, L. 1983; amd. Sec. 9, Ch. 337, L. 1989; amd. Sec. 34, Ch. 11, Sp. L. June 1989.

20-9-323 through 20-9-325 reserved.

20-9-326. Annual inflation-related adjustments to basic entitlements and per-ANB entitlements. (1) In preparing and submitting an agency budget pursuant to 17-7-111 and 17-7-112, the superintendent of public instruction shall determine the inflation factor for the basic and per-ANB entitlements in each fiscal year of the ensuing biennium. The inflation factor is calculated as follows:

(a) for the first year of the biennium, divide the consumer price index for July 1 of the prior calendar year by the consumer price index for July 1 of the calendar year 3 years prior to the prior calendar year and raise the resulting ratio to the power of one-third; and

(b) for the second year of the biennium, divide the consumer price index for July 1 of the current calendar year by the consumer price index for July 1 of the calendar year 3 years prior to the current calendar year and raise the resulting ratio to the power of one-third.

(2) The present law base for the basic and per-ANB entitlements, calculated under Title 17, chapter 7, part 1, must consist of any enrollment increases or decreases plus the inflation factor calculated pursuant to this section, not to exceed 3% in each year, applied to both years of the biennium.

(3) For the purposes of this section, "consumer price index" means the consumer price index, U.S. city average, all urban consumers, for all items, using the 1982-84 base of 100, as published by the bureau of labor statistics of the U.S. department of labor.

History: En. Sec. 1, Ch. 550, L. 2003.

20-9-327. Quality educator payment. (1) (a) The state shall provide a quality educator payment to:

- (i) public school districts, as defined in 20-6-101 and 20-6-701;
- (ii) special education cooperatives, as described in 20-7-451;
- (iii) the Montana school for the deaf and blind, as described in 20-8-101;

(iv) state youth correctional facilities, as defined in 41-5-103; and
 (v) the Montana youth challenge program.
 (b) A special education cooperative that has not met the requirements of 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction.

(2) (a) The quality educator payment for special education cooperatives must be distributed directly to those entities by the superintendent of public instruction.

(b) The quality educator payment for the Montana school for the deaf and blind must be distributed to the Montana school for the deaf and blind.

(c) The quality educator payment for Pine Hills and Riverside youth correctional facilities must be distributed to those facilities by the department of corrections.

(d) The quality educator payment for the Montana youth challenge program must be distributed to that program by the department of military affairs.

(3) The quality educator payment is calculated as provided in 20-9-306, using the number of full-time equivalent educators, as reported to the superintendent of public instruction for accreditation purposes in the previous school year, each of whom:

(a) holds a valid certificate under the provisions of 20-4-106 and is employed by an entity listed in subsection (1) of this section in a position that requires an educator license in accordance with the administrative rules adopted by the board of public education; or

(b) (i) is a licensed professional under 37-8-405, 37-8-415, 37-11-301, 37-15-301, 37-17-302, 37-22-301, 37-23-201, 37-24-301, or 37-25-302; and

(ii) is employed by an entity listed in subsection (1) to provide services to students.

History: En. Sec. 1, Ch. 4, Sp. L. December 2005; amd. Sec. 8, Ch. 94, L. 2007; amd. Sec. 1, Ch. 354, L. 2007; amd. Sec. 16, Ch. 1, Sp. L. May 2007.

Compiler's Comments

2007 Special Session Amendment: Chapter 1 in (3) substituted "calculated as provided in 20-9-306, using" for "\$2,000 times"; in (3)(b)(i) inserted reference to 37-17-302 and 37-22-301; and made minor changes in style. Amendment effective July 1, 2007.

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

2007 Amendments — Composite Section: Chapter 94 in (1)(b) near beginning after "requirements of" deleted "20-7-453 and"; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 354 inserted (1)(a)(v) regarding youth challenge program; inserted (2)(d) regarding quality educator payments for the youth challenge program; and made minor changes in style. Amendment effective July 1, 2007.

Effective Date — Applicability: Section 15, Ch. 4, Sp. L. December 2005, provided: "[This act] is effective July 1, 2006, and applies to school budgets for school fiscal years beginning on or after July 1, 2006."

20-9-328. At-risk student payment. (1) The state shall provide an at-risk student payment to public school districts, as defined in 20-6-101 and 20-6-701, for at-risk students, as defined in 20-1-101 and referred to in 20-9-309.

(2) The at-risk student payment must be distributed to public school districts by the office of public instruction in the same manner that the office of public instruction allocates the funds received under 20 U.S.C. 6332, et seq. The office of public instruction shall prorate payments to districts based upon the available appropriation.

(3) On or before September 15, 2010, the office of public instruction shall report to the governor and the legislature on the change in status of standardized test scores, graduation rates, and drop-out rates of at-risk students using fiscal year 2006 data as a baseline.

History: En. Sec. 2, Ch. 4, Sp. L. December 2005.

Compiler's Comments

Effective Date — Applicability: Section 15, Ch. 4, Sp. L. December 2005, provided: "[This act] is effective July 1, 2006, and applies to school budgets for school fiscal years beginning on or after July 1, 2006."

20-9-329. Indian education for all payment. (1) The state shall provide an Indian education for all payment to public school districts, as defined in 20-6-101 and 20-6-701, to implement the provisions of Article X, section 1(2), of the Montana constitution and Title 20, chapter 1, part 5.

(2) The Indian education for all payment is calculated as provided in 20-9-306 and is a component of the BASE budget of the district.

(3) The district shall deposit the payment in the general fund of the district.

(4) A public school district that receives an Indian education for all payment may not divert the funds to any purpose other than curriculum development, providing curriculum and materials to students, and providing training to teachers about the curriculum and materials. A public school district shall file an annual report with the office of public instruction, in a form prescribed by the superintendent of public instruction, that specifies how the Indian education for all funds were expended.

History: En. Sec. 3, Ch. 4, Sp. L. December 2005; amd. Sec. 17, Ch. 1, Sp. L. May 2007.

Compiler's Comments

2007 Special Session Amendment: Chapter 1 in (2) substituted "is calculated as provided in 20-9-306 and is a component of the BASE budget of the district" for "is the greater of \$100 for each district or \$20.40 for each ANB, calculated as provided in 20-9-311, for each fiscal year"; and inserted (4) concerning nondiversion of Indian education for all funds. Amendment effective July 1, 2007.

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

Effective Date — Applicability: Section 15, Ch. 4, Sp. L. December 2005, provided: "[This act] is effective July 1, 2006, and applies to school budgets for school fiscal years beginning on or after July 1, 2006."

20-9-330. American Indian achievement gap payment. (1) The state shall provide an American Indian achievement gap payment to public school districts, as defined in 20-6-101 and 20-6-701, for the purpose of closing the educational achievement gap that exists between American Indian students and non-Indian students.

(2) (a) The American Indian achievement gap payment is calculated as provided in 20-9-306, using the number of American Indian students enrolled in the district based on the count of regularly enrolled students on the first Monday in October of the prior school year as reported to the office of public instruction.

(b) A school district may not require a student to disclose the student's race.

(3) The district shall deposit the payment in the general fund of the district.

(4) On or before September 15, 2010, the office of public instruction shall report to the governor and the legislature on the change in status of standardized test scores, graduation rates, and drop-out rates of American Indian students using fiscal year 2006 data as a baseline.

History: En. Sec. 4, Ch. 4, Sp. L. December 2005; amd. Sec. 18, Ch. 1, Sp. L. May 2007.

Compiler's Comments

2007 Special Session Amendment: Chapter 1 in (2)(a) substituted "calculated as provided in 20-9-306, using the number of American Indian students" for "\$200 for each American Indian student". Amendment effective July 1, 2007.

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

Effective Date — Applicability: Section 15, Ch. 4, Sp. L. December 2005, provided: "[This act] is effective July 1, 2006, and applies to school budgets for school fiscal years beginning on or after July 1, 2006."

20-9-331. Basic county tax for elementary equalization and other revenue for county equalization of elementary BASE funding program. (1) Subject to 15-10-420, the county commissioners of each county shall levy an annual basic county tax of 33 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 61-3-321(2) or (3), 61-3-529, 61-3-537, 61-3-562, 61-3-570, and 67-3-204, for the purposes of elementary equalization and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the elementary BASE funding programs of the school districts in the county and to the state general fund in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the total of the BASE funding programs of all elementary districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the department of revenue, as provided in 15-1-504, for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed by this section and the revenue from the following sources must be used for the equalization of the elementary

BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds designated for the elementary county equalization fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(f) gross proceeds taxes from coal under 15-23-703; and

(g) oil and natural gas production taxes.

History: En. 75-6912 by Sec. 262, Ch. 5, L. 1971; amd. Sec. 1, Ch. 355, L. 1973; R.C.M. 1947, 75-6912; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 413, L. 1983; amd. Sec. 1, Ch. 418, L. 1983; amd. Sec. 2, Ch. 699, L. 1983; amd. Sec. 1, Ch. 50, L. 1985; amd. Sec. 2, Ch. 265, L. 1985; amd. Sec. 1, Ch. 552, L. 1985; amd. Sec. 13, Ch. 695, L. 1985; amd. Sec. 15, Ch. 557, L. 1987; amd. Sec. 16, Ch. 611, L. 1987; amd. Sec. 20, Ch. 655, L. 1987; amd. Secs. 35, 84, Ch. 11, Sp. L. June 1989; amd. Sec. 9, Ch. 267, L. 1991; amd. Sec. 4, Ch. 6, Sp. L. July 1992; amd. Sec. 55, Ch. 633, L. 1993; amd. Sec. 17, Ch. 9, Sp. L. November 1993; amd. Sec. 41, Ch. 451, L. 1995; amd. Sec. 33, Ch. 509, L. 1995; amd. Sec. 3, Ch. 580, L. 1995; amd. Sec. 20, Ch. 22, L. 1997; amd. Sec. 10, Ch. 496, L. 1997; amd. Sec. 15, Ch. 515, L. 1999; amd. Sec. 11, Ch. 554, L. 1999; amd. Sec. 111, Ch. 584, L. 1999; amd. Sec. 6, Ch. 191, L. 2001; amd. Sec. 10, Ch. 257, L. 2001; amd. Sec. 119, Ch. 574, L. 2001; amd. Sec. 5, Ch. 41, L. 2003; amd. Sec. 17, Ch. 542, L. 2005.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees in Justice Court, 3-10-601.

20-9-332. Fines and penalties proceeds for elementary county equalization. All fines and penalties collected under the provisions of this title, except those collected by a justice's court, must be paid into the elementary county equalization fund as provided by 20-9-331(2)(c). In order to implement this section and any other provision of law requiring the deposit of fines in the elementary county equalization fund, a report must be made to the county superintendent of the county, at the close of each term, by the clerk of each district court, reporting all fines imposed and collected during the term and indicating the type of violation and the date of collection.

History: En. 75-8302 by Sec. 486, Ch. 5, L. 1971; R.C.M. 1947, 75-8302; amd. Sec. 3, Ch. 413, L. 1983; amd. Sec. 16, Ch. 557, L. 1987; amd. Sec. 21, Ch. 22, L. 1997.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees in Justice Court, 3-10-601.

Penalty for violation of school laws, 20-1-207.

20-9-333. Basic county tax for high school equalization and other revenue for county equalization of high school BASE funding program. (1) Subject to 15-10-420, the county commissioners of each county shall levy an annual basic county tax of 22 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 61-3-321(2) or (3), 61-3-529, 61-3-537, 61-3-562, 61-3-570, and 67-3-204, for the purposes of high school equalization and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the BASE funding programs of high school districts in the county and to the state general fund in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the sum of the county's high school tuition obligation and the total of the BASE funding programs of all high school districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the department of revenue, as provided in 15-1-504, for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed in this section and the revenue from the following sources must be used for the equalization of the high school BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

- (a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;
- (b) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;
- (c) gross proceeds taxes from coal under 15-23-703; and
- (d) oil and natural gas production taxes.

History: En. 75-6913 by Sec. 263, Ch. 5, L. 1971; amd. Sec. 2, Ch. 355, L. 1973; R.C.M. 1947, 75-6913; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 418, L. 1983; amd. Sec. 3, Ch. 699, L. 1983; amd. Sec. 2, Ch. 50, L. 1985; amd. Sec. 3, Ch. 265, L. 1985; amd. Sec. 3, Ch. 299, L. 1985; amd. Sec. 2, Ch. 552, L. 1985; amd. Sec. 14, Ch. 695, L. 1985; amd. Sec. 17, Ch. 611, L. 1987; amd. Sec. 21, Ch. 655, L. 1987; amd. Secs. 36, 85, Ch. 11, Sp. L. June 1989; amd. Sec. 10, Ch. 267, L. 1991; amd. Sec. 5, Ch. 6, Sp. L. July 1992; amd. Sec. 55, Ch. 633, L. 1993; amd. Sec. 18, Ch. 9, Sp. L. November 1993; amd. Sec. 42, Ch. 451, L. 1995; amd. Sec. 34, Ch. 509, L. 1995; amd. Sec. 4, Ch. 580, L. 1995; amd. Sec. 22, Ch. 22, L. 1997; amd. Sec. 11, Ch. 496, L. 1997; amd. Sec. 16, Ch. 515, L. 1999; amd. Sec. 12, Ch. 554, L. 1999; amd. Sec. 112, Ch. 584, L. 1999; amd. Sec. 7, Ch. 191, L. 2001; amd. Sec. 11, Ch. 257, L. 2001; amd. Sec. 120, Ch. 574, L. 2001; amd. Sec. 18, Ch. 542, L. 2005.

20-9-334. Repealed. Sec. 9, Ch. 464, L. 2001.

History: En. 75-6914 by Sec. 264, Ch. 5, L. 1971; amd. Sec. 19, Ch. 266, L. 1977; R.C.M. 1947, 75-6914; amd. Sec. 3, Ch. 552, L. 1985; amd. Sec. 6, Ch. 711, L. 1991; amd. Sec. 8, Ch. 765, L. 1991; amd. Sec. 6, Ch. 6, Sp. L. July 1992; amd. Sec. 23, Ch. 22, L. 1997.

20-9-335. Formula for apportionment of county equalization money. (1) The superintendent of public instruction shall calculate the apportionment of revenue available in the elementary and high school county equalization funds in accordance with the following procedure:

(a) determine the percentage that the county equalization money available for the support of the elementary direct state aid of the districts in the county is of the total elementary direct state aid of all districts in the county;

(b) multiply the elementary direct state aid amount of each district by the percentage determined in subsection (1)(a) to determine the portion of the county equalization money available to each school district.

(2) The procedure in subsection (1) must also be applied for the high school direct state aid.

(3) Territory situated within a county may not be excluded from the calculations of the county equalization money under this section solely because the territory lies within the boundaries of a joint district. Cash balances to the credit of any district at the end of a school fiscal year may not be considered in the apportionment procedure prescribed in this section.

(4) The county equalization money reported under these procedures is the first source of revenue for financing the elementary and high school direct state aid payments.

History: En. 75-6915 by Sec. 265, Ch. 5, L. 1971; amd. Sec. 11, Ch. 137, L. 1973; amd. Sec. 1, Ch. 255, L. 1973; R.C.M. 1947, 75-6915; amd. Sec. 4, Ch. 413, L. 1983; amd. Sec. 4, Ch. 299, L. 1985; amd. Sec. 7, Ch. 6, Sp. L. July 1992; amd. Sec. 47, Ch. 633, L. 1993; amd. Sec. 24, Ch. 22, L. 1997; amd. Sec. 7, Ch. 464, L. 2001; amd. Sec. 6, Ch. 463, L. 2005.

20-9-336 through 20-9-340 reserved.

20-9-341. Definition of interest and income money. (1) As used in this title, the term "interest and income money" means the total of the following revenue, as provided for by Article X, section 5, of the 1972 Montana constitution:

- (a) 95% of the interest received from the investment of the public school fund;
- (b) 95% of the interest received from the investment of any other school funds held in trust by the state board of land commissioners;
- (c) 95% of the income received from the leasing of or sale of timber from state school lands after any deductions that may be made under the provisions of Title 77, chapter 1, part 6; and
- (d) 95% of any other income derived from any other covenant affecting the use of state school lands.

(2) The remaining 5% of the revenue described in subsections (1)(a) through (1)(d) must be annually credited to the public school fund after any deductions made under 77-1-109.

History: En. 75-6907 by Sec. 257, Ch. 5, L. 1971; amd. Sec. 9, Ch. 137, L. 1973; R.C.M. 1947, 75-6907; amd. Sec. 3, Ch. 14, Sp. L. January 1992; amd. Sec. 113, Ch. 42, L. 1997; amd. Sec. 5, Ch. 122, L. 1999.

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.
Board of Land Commissioners, Art. X, sec. 4, Mont. Const.
The Enabling Act, sec. 11 (see anno. vol. 1).

20-9-342. Deposit of interest and income money by state board of land commissioners. The state board of land commissioners shall annually deposit the interest and income money for each calendar year into the guarantee account, provided for in 20-9-622, for state equalization aid by the last business day of February following the calendar year in which the money was received.

History: En. 75-6908 by Sec. 258, Ch. 5, L. 1971; amd. Sec. 10, Ch. 137, L. 1973; R.C.M. 1947, 75-6908; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 35, Ch. 509, L. 1995; amd. Sec. 4, Ch. 554, L. 2001; amd. Sec. 2, Ch. 10, Sp. L. August 2002.

Cross-References

Disposition of revenue and profits from state lands, 77-1-216.

20-9-343. Definition of and revenue for state equalization aid. (1) As used in this title, the term "state equalization aid" means revenue as required in this section for:

(a) distribution to the public schools for guaranteed tax base aid, BASE aid, state reimbursement for school facilities, and grants for school technology purchases; and

(b) negotiated payments authorized under 20-7-420(3) up to \$500,000 a biennium.

(2) The superintendent of public instruction may spend throughout the biennium funds appropriated for the purposes of guaranteed tax base aid, BASE aid for the BASE funding program, state reimbursement for school facilities, negotiated payments authorized under 20-7-420(3), and school technology purchases.

(3) From July 1, 2001, through June 30, 2003, the following money must be paid into the guarantee account provided for in 20-9-622 for the public schools of the state as indicated:

(a) interest and income money described in 20-9-341 and 20-9-342; and

(b) investment income earned by investing interest and income money described in 20-9-341 and 20-9-342.

(4) Beginning July 1, 2003, the following money must be paid into the guarantee account provided for in 20-9-622 for the public schools of the state as indicated:

(a) (i) subject to subsection (4)(a)(ii), interest and income money described in 20-9-341 and 20-9-342; and

(ii) an amount of money equal to the income money attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year, which is statutorily appropriated, pursuant to 20-9-534, to be used for the purposes of 20-9-533;

(b) investment income earned by investing interest and income money described in 20-9-341 and 20-9-342.

History: En. 75-6916 by Sec. 266, Ch. 5, L. 1971; amd. Sec. 12, Ch. 137, L. 1973; amd. Sec. 3, Ch. 355, L. 1973; amd. Sec. 12, Ch. 502, L. 1975; amd. Sec. 1, Ch. 356, L. 1977; R.C.M. 1947, 75-6916; amd. Sec. 15, Ch. 634, L. 1979; amd. Sec. 2, Ch. 317, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 20, Sp. L. June 1986; amd. Sec. 70, Ch. 370, L. 1987; amd. Sec. 3, Ch. 662, L. 1987; amd. Sec. 5, Ch. 666, L. 1987; amd. Sec. 37, Ch. 11, Sp. L. June 1989; amd. Sec. 5, Ch. 622, L. 1991; amd. Secs. 1, 3, Ch. 729, L. 1991; amd. Sec. 18, Ch. 787, L. 1991; amd. Sec. 6, Ch. 375, L. 1993; amd. Sec. 8, Ch. 593, L. 1993; amd. Sec. 24, Ch. 633, L. 1993; amd. Sec. 36, Ch. 509, L. 1995; amd. Sec. 4, Ch. 517, L. 1995; amd. Sec. 17, Ch. 237, L. 2001; amd. Sec. 5, Ch. 554, L. 2001; amd. Secs. 3, 5, Ch. 10, Sp. L. August 2002.

Cross-References

Disposal of severance taxes, 15-35-108.
Funding for special education cooperatives or joint boards, 20-7-457.
Local impact and education trust fund account created, 90-6-202.

20-9-344. Duties of board of public education for distribution of BASE aid. (1) The board of public education shall administer and distribute the BASE aid and state advances for county equalization in the manner and with the powers and duties provided by law. The board of public education:

(a) shall adopt policies for regulating the distribution of BASE aid and state advances for county equalization in accordance with the provisions of law;

(b) may require reports from the county superintendents, county treasurers, and trustees that it considers necessary; and

(c) shall order the superintendent of public instruction to distribute the BASE aid on the basis of each district's annual entitlement to the aid as established by the superintendent of public instruction. In ordering the distribution of BASE aid, the board of public education may not increase or decrease the BASE aid distribution to any district on account of any difference that may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

(2) The board of public education may order the superintendent of public instruction to withhold distribution of BASE aid from a district when the district fails to:

(a) submit reports or budgets as required by law or rules adopted by the board of public education; or

(b) maintain accredited status.

(3) Prior to any proposed order by the board of public education to withhold distribution of BASE aid or county equalization money, the district is entitled to a contested case hearing before the board of public education, as provided under the Montana Administrative Procedure Act.

(4) If a district or county receives more BASE aid than it is entitled to, the county treasurer shall return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the superintendent of public instruction.

(5) Except as provided in 20-9-347(2), the BASE aid payment must be distributed according to the following schedule:

(a) from August to October of the school fiscal year, to each district 10% of:

(i) direct state aid;

(ii) the total quality educator payment;

(iii) the total at-risk student payment;

(iv) the total Indian education for all payment; and

(v) the total American Indian achievement gap payment;

(b) from December to April of the school fiscal year, to each district 10% of:

(i) direct state aid;

(ii) the total quality educator payment;

(iii) the total at-risk student payment;

(iv) the total Indian education for all payment; and

(v) the total American Indian achievement gap payment;

(c) in November of the school fiscal year, one-half of the guaranteed tax base aid payment to each district or county that has submitted a final budget to the superintendent of public instruction in accordance with the provisions of 20-9-134;

(d) in May of the school fiscal year, the remainder of the guaranteed tax base aid payment to each district or county; and

(e) in June of the school fiscal year, the remaining payment to each district of direct state aid, the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, and the total American Indian achievement gap payment.

(6) The distribution provided for in subsection (5) must occur by the last working day of each month.

History: En. 75-6917 by Sec. 267, Ch. 5, L. 1971; amd. Sec. 1, Ch. 166, L. 1973; amd. Sec. 2, Ch. 345, L. 1973; amd. Sec. 1, Ch. 346, L. 1973; amd. Sec. 1, Ch. 55, L. 1974; amd. Sec. 41, Ch. 213, L. 1975; R.C.M. 1947, 75-6917; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 6, Ch. 317, L. 1981; amd. Secs. 1, 3, Ch. 236, L. 1983; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 18, Sp. L. June 1986; amd. Sec. 4, Ch. 1, Sp. L. June 1989; amd. Sec. 38, Ch. 11, Sp. L. June 1989; amd. Sec. 6, Ch. 622, L. 1991; amd. Sec. 28, Ch. 767, L. 1991; amd. Sec. 1, Ch. 1, Sp. L. July 1992; amd. Sec. 8, Ch. 6, Sp. L. July 1992; amd. Sec. 25, Ch. 633, L. 1993; amd. Sec. 1, Ch. 308, L. 1999; amd. Sec. 62, Ch. 114, L. 2003; amd. Sec. 10, Ch. 4, Sp. L. December 2005.

Compiler's Comments

2005 Special Session Amendment: Chapter 4 in (5)(a), (5)(b), and (5)(e) inserted references to the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, and the total American Indian achievement gap payment; and made minor changes in style. Amendment effective July 1, 2006.

Effective Date — Applicability: Section 15, Ch. 4, Sp. L. December 2005, provided: "[This act] is effective July 1, 2006, and applies to school budgets for school fiscal years beginning on or after July 1, 2006."

20-9-345. Repealed. Sec. 7, Ch. 317, L. 1981.

History: En. 75-6917.1 by Sec. 2, Ch. 55, L. 1974; R.C.M. 1947, 75-6917.1; amd. Sec. 1, Ch. 540, L. 1981.

20-9-346. Duties of superintendent of public instruction for state and county equalization aid distribution. The superintendent of public instruction shall administer the distribution of the state and county equalization aid by:

(1) establishing the annual entitlement of each district and county to state and county equalization aid, based on the data reported in the retirement, general fund, and debt service fund budgets for each district that have been adopted for the current school fiscal year and verified by the superintendent of public instruction;

(2) for the purposes of state advances and reimbursements for school facilities, limiting the distribution to no more than the amount appropriated for the school fiscal year to the districts that are eligible under the provisions of 20-9-366 through 20-9-371 by:

(a) determining the debt service payment obligation in each district for debt service on bonds that were sold as provided in 20-9-370(3) that qualify for a state advance or reimbursement for school facilities under the provisions of 20-9-366 through 20-9-369 and 20-9-370;

(b) based on the limitation of state equalization aid appropriated for debt service purposes, determining the state advance for school facilities and the proportionate share of state reimbursement for school facilities that each eligible district must receive for the school fiscal year; and

(c) distributing that amount by May 31 of each school fiscal year to each eligible district for reducing the property tax for the debt service fund for the ensuing school fiscal year;

(3) distributing by electronic transfer the BASE aid and state advances for county equalization, for each district or county entitled to the aid, to the county treasurer of the respective county for county equalization or to the county treasurer of the county where the district is located or to the investment account identified by the applicable district for BASE aid, in accordance with the distribution ordered by the board of public education;

(4) keeping a record of the full and complete data concerning money available for state equalization aid, state advances for county equalization, and the entitlements for BASE aid of the districts of the state;

(5) reporting to the board of public education the estimated amount that will be available for state equalization aid; and

(6) reporting to the office of budget and program planning, as provided in 17-7-111:

(a) the figures and data available concerning distributions of state and county equalization aid during the preceding 2 school fiscal years;

(b) the amount of state equalization aid then available;

(c) the apportionment made of the available money but not yet distributed;

(d) the latest estimate of accruals of money available for state equalization aid; and

(e) the amount of state advances and repayment for county equalization.

History: En. 75-6918 by Sec. 268, Ch. 5, L. 1971; amd. Sec. 2, Ch. 166, L. 1973; R.C.M. 1947, 75-6918; amd. Sec. 39, Ch. 11, Sp. L. June 1989; amd. Sec. 26, Ch. 112, L. 1991; amd. Sec. 9, Ch. 6, Sp. L. July 1992; amd. Sec. 26, Ch. 349, L. 1993; amd. Sec. 26, Ch. 633, L. 1993; amd. Sec. 37, Ch. 509, L. 1995; amd. Sec. 1, Ch. 586, L. 1995; amd. Sec. 3, Ch. 205, L. 2001.

20-9-347. Distribution of BASE aid and special education allowable cost payments in support of BASE funding program — exceptions. (1) The superintendent of public instruction shall:

(a) supply the county treasurer and the county superintendent with a monthly report of the payment of BASE aid in support of the BASE funding program of each district of the county;

(b) in the manner described in 20-9-344, provide for a state advance to each county in an amount that is no less than the amount anticipated to be raised for the elementary and high school county equalization funds as provided in 20-9-331 and 20-9-333; and

(c) adopt rules to implement the provisions of subsection (1)(b).

(2) (a) The superintendent of public instruction is authorized to adjust the schedule prescribed in 20-9-344 for distribution of the BASE aid payments if the distribution will cause a district to register warrants under the provisions of 20-9-212(8).

(b) To qualify for an adjustment in the payment schedule, a district shall demonstrate to the superintendent of public instruction, in the manner required by the office, that the payment schedule prescribed in 20-9-344 will result in insufficient money available in all funds of the

district to make payment of the district's warrants. The county treasurer shall confirm the anticipated deficit. This section may not be construed to authorize the superintendent of public instruction to exceed a district's annual payment for BASE aid.

(3) The superintendent of public instruction shall:

(a) distribute special education allowable cost payments to districts; and

(b) supply the county treasurer and the county superintendent of schools with a report of payments for special education allowable costs to districts of the county.

History: En. 75-6919 by Sec. 269, Ch. 5, L. 1971; R.C.M. 1947, 75-6919; amd. Sec. 40, Ch. 11, Sp. L. June 1989; amd. Sec. 10, Ch. 6, Sp. L. July 1992; amd. Sec. 27, Ch. 633, L. 1993; amd. Sec. 25, Ch. 22, L. 1997; amd. Sec. 114, Ch. 42, L. 1997.

20-9-348. Estimation of state equalization aid for budget purposes. The apportionment of state equalization aid shall be the second source of revenue in calculating the financing of the elementary district BASE funding program and the high school district BASE funding program. In order to allow for the estimation of the amount of money to be realized from this source of revenue when the county superintendent is estimating the general fund budget revenues, the county superintendent shall consider that the state BASE funding program revenues and county equalization moneys, together, will be capable of financing 100% of the BASE funding program.

History: En. 75-6920 by Sec. 270, Ch. 5, L. 1971; R.C.M. 1947, 75-6920; amd. Sec. 5, Ch. 299, L. 1985.

20-9-349 and 20-9-350 reserved.

20-9-351. Funding of deficiency in BASE aid. If the money available for BASE aid is not the result of a reduction in spending under 17-7-140 and is not sufficient to provide the guaranteed tax base aid required under 20-9-366 through 20-9-369 and BASE aid support determined under 20-9-347, the superintendent of public instruction shall request the budget director to submit a request for a supplemental appropriation in the second year of the biennium that is sufficient to complete the funding of BASE aid for the elementary and high school districts for the current biennium.

History: En. 75-6921 by Sec. 271, Ch. 5, L. 1971; amd. Sec. 4, Ch. 355, L. 1973; R.C.M. 1947, 75-6921; amd. Sec. 3, Ch. 317, L. 1981; amd. Sec. 2, Ch. 540, L. 1981; amd. Sec. 4, Ch. 15, L. 1985; amd. Sec. 6, Ch. 299, L. 1985; amd. Sec. 41, Ch. 11, Sp. L. June 1989; amd. Sec. 3, Ch. 5, Sp. L. July 1992; amd. Sec. 28, Ch. 633, L. 1993.

Cross-References

Supplemental appropriations, 17-7-301.

20-9-352. Repealed. Sec. 94, Ch. 11, Sp. L. June 1989.

History: En. 75-6922 by Sec. 272, Ch. 5, L. 1971; amd. Sec. 5, Ch. 355, L. 1973; amd. Sec. 1, Ch. 212, L. 1975; R.C.M. 1947, 75-6922; amd. Sec. 4, Ch. 317, L. 1981; amd. Sec. 3, Ch. 540, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 418, L. 1983; amd. Sec. 4, Ch. 699, L. 1983; amd. Sec. 5, Ch. 15, L. 1985; amd. Sec. 4, Ch. 265, L. 1985; amd. Sec. 15, Ch. 695, L. 1985; amd. Sec. 18, Ch. 611, L. 1987; amd. Sec. 22, Ch. 655, L. 1987; amd. Sec. 30, Ch. 83, L. 1989; amd. Sec. 86, Ch. 11, Sp. L. June 1989.

20-9-353. Additional financing for general fund — election for authorization to impose. (1) The trustees of a district may propose to adopt an over-BASE budget amount for the district general fund that does not exceed the general fund budget limitations, as provided in 20-9-308.

(2) When the trustees of the district propose to adopt an over-BASE budget under subsection (1), any increase in local property taxes authorized by 20-9-308(4) must be submitted to a vote of the qualified electors of the district, as provided in 15-10-425. The trustees are not required to submit to the qualified electors any increase in state funding of the basic or per-ANB entitlements or of the general fund payments established in 20-9-327 through 20-9-330 approved by the legislature. When the trustees of a district determine that a voted amount of financing is required for the general fund budget, the trustees shall submit the proposition to finance the voted amount to the electors who are qualified under 20-20-301 to vote upon the proposition. The election must be called and conducted in the manner prescribed by this title for school elections and must conform to the requirements of 15-10-425. The ballot for the election must conform to the requirements of 15-10-425.

(3) If the proposition on any additional financing for the general fund is approved by a majority vote of the electors voting at the election, the proposition carries and the trustees may use any portion or all of the authorized amount in adopting the final general fund budget. The

trustees shall certify any additional levy amount authorized by the election on the budget form that is submitted to the county superintendent, and the county commissioners shall levy the authorized number of mills on the taxable value of all taxable property within the district, as prescribed in 20-9-141.

(4) All levies adopted under this section must be authorized by the election conducted before August 1 of the school fiscal year for which it is effective.

(5) If the trustees of a district are required to submit a proposition to finance an over-BASE budget amount, as allowed by 20-9-308, to the electors of the district, the trustees shall comply with the provisions of subsections (2) through (4) of this section.

History: En. 75-6923 by Sec. 273, Ch. 5, L. 1971; amd. Sec. 7, Ch. 83, L. 1971; amd. Sec. 6, Ch. 355, L. 1973; amd. Sec. 2, Ch. 214, L. 1974; amd. Sec. 1, Ch. 230, L. 1974; amd. Sec. 1, Ch. 346, L. 1974; amd. Sec. 1, Ch. 454, L. 1975; R.C.M. 1947, 75-6923; amd. Sec. 2, Ch. 72, L. 1979; amd. Sec. 5, Ch. 75, L. 1981; amd. Sec. 2, Ch. 110, L. 1985; amd. Sec. 1, Ch. 338, L. 1987; amd. Sec. 42, Ch. 11, Sp. L. June 1989; amd. Sec. 29, Ch. 767, L. 1991; amd. Sec. 29, Ch. 633, L. 1993; amd. Sec. 1, Ch. 266, L. 1995; amd. Sec. 8, Ch. 211, L. 1997; amd. Secs. 7, 10(2), Ch. 514, L. 1999; amd. Sec. 27, Ch. 495, L. 2001; amd. Sec. 16, Ch. 462, L. 2005; amd. Sec. 3, Ch. 173, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 173 in (1) near middle after "exceed the" deleted "maximum" and after "budget" deleted "for the district or other"; deleted former (1)(b) that read: "(b) a general fund budget amount in excess of the maximum general fund budget amount for the district, as provided in 20-9-308(3)"; in (2) in first sentence near middle substituted "20-9-308(4)" for "20-9-308(5)" and in second sentence near middle after "entitlements" inserted "or of the general fund payments established in 20-9-327 through 20-9-330"; deleted former (3) that read: "(3) When the trustees of a district propose to adopt the general fund budget amount in excess of the maximum general fund budget under subsection (1)(b), the trustees shall submit the proposition to finance the additional amount of general fund budget authority to the electors who are qualified under 20-20-301 to vote upon the proposition. The election must be called and conducted in the manner prescribed by this title for school elections. The ballot for the election must state the amount of the budget to be financed, the approximate number of mills required to fund all or a portion of the budget amount, and the purpose for which the money will be expended. The ballot must be in the following format:

PROPOSITION

Shall the district be authorized to expend the sum of (state the additional amount to be expended) and being approximately (give number) mills for the purpose of (insert the purpose for which the additional financing is made)?

☐ FOR budget authority and any levy.

☐ AGAINST budget authority and any levy"; in (3) in first sentence near beginning substituted "proposition" for "election" and after "financing" deleted "or budget authority"; deleted former (5) that read: "(5) Authorization to levy an additional tax to support a budget amount adopted as allowed by 20-9-308(3) is effective for only 1 school fiscal year"; in (5) near middle after "amount" deleted "or an amount in excess of the maximum general fund budget amount for the district" and after "20-9-308" deleted "(3)"; and made minor changes in style. Amendment effective April 10, 2007.

Cross-References

Property tax levies, Title 15, ch. 10.

School property, Title 20, ch. 6, part 6.

School elections, Title 20, ch. 20.

20-9-354 through 20-9-359 reserved.

20-9-360. State equalization aid levy. Subject to 15-10-420, there is a levy of 40 mills imposed by the county commissioners of each county on all taxable property within the state, except property for which a tax or fee is required under 61-3-321(2) or (3), 61-3-529, 61-3-537, 61-3-562, 61-3-570, and 67-3-204. Proceeds of the levy must be remitted to the department of revenue, as provided in 15-1-504, and must be deposited to the credit of the state general fund for state equalization aid to the public schools of Montana.

History: En. Sec. 50, Ch. 11, Sp. L. June 1989; amd. Sec. 30, Ch. 767, L. 1991; amd. Sec. 38, Ch. 509, L. 1995; amd. Sec. 5, Ch. 580, L. 1995; amd. Sec. 31, Ch. 422, L. 1997; amd. Sec. 12, Ch. 496, L. 1997; amd. Sec. 17, Ch. 515, L. 1999; amd. Sec. 113, Ch. 584, L. 1999; amd. Sec. 13, Ch. 257, L. 2001; amd. Sec. 19, Ch. 542, L. 2005.

20-9-361. County equalization revenue. Revenue received in support of county equalization under the provisions of 20-9-331 and 20-9-333 is to be used for county equalization aid for the public schools, as provided by law, and must be accounted for in accordance with generally accepted accounting principles.

History: En. Sec. 51, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 729, L. 1991; amd. Sec. 39, Ch. 509, L. 1995; amd. Sec. 32, Ch. 422, L. 1997.

20-9-362 through 20-9-365 reserved.

20-9-366. Definitions. As used in 20-9-366 through 20-9-371, the following definitions apply:

(1) “County retirement mill value per elementary ANB” or “county retirement mill value per high school ANB” means the sum of the taxable valuation in the previous year of all property in the county divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts’ and high school districts’ current year total per-ANB entitlement amounts.

(2) (a) “District guaranteed tax base ratio” for guaranteed tax base funding for the BASE budget of an eligible district means the taxable valuation in the previous year of all property in the district, except for property subject to the creation of a new school district under 20-6-326, divided by the sum of the district’s current year BASE budget amount less direct state aid and the state special education allowable cost payment.

(b) “District mill value per ANB”, for school facility entitlement purposes, means the taxable valuation in the previous year of all property in the district, except for property subject to the creation of a new school district under 20-6-326, divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district’s current year total per-ANB entitlement amount.

(3) “Facility guaranteed mill value per ANB”, for school facility entitlement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 140% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB count used to calculate the elementary school districts’ and high school districts’ current year total per-ANB entitlement amounts.

(4) (a) “Statewide elementary guaranteed tax base ratio” or “statewide high school guaranteed tax base ratio”, for guaranteed tax base funding for the BASE budget of an eligible district, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 193% and divided by the total sum of either the state elementary school districts’ or the high school districts’ current year BASE budget amounts less total direct state aid.

(b) “Statewide mill value per elementary ANB” or “statewide mill value per high school ANB”, for school retirement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 121% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB amount used to calculate the elementary school districts’ and high school districts’ current year total per-ANB entitlement amounts.

History: En. Sec. 60, Ch. 11, Sp. L. June 1989; amd. Sec. 4, Ch. 3, Sp. L. May 1990; amd. Sec. 7, Ch. 711, L. 1991; amd. Sec. 1, Ch. 790, L. 1991; amd. Sec. 30, Ch. 633, L. 1993; amd. Sec. 3, Ch. 211, L. 1999; amd. Sec. 4, Ch. 550, L. 2003; amd. Sec. 17, Ch. 462, L. 2005; amd. Sec. 3, Ch. 194, L. 2007; amd. Sec. 19, Ch. 1, Sp. L. May 2007.

Compiler’s Comments

2007 Special Session Amendment: Chapter 1 in definition of statewide elementary guaranteed tax base ratio in (a) near middle after “multiplied by” substituted “193%” for “175%”. Amendment effective July 1, 2007.

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: “[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007.”

2007 Amendment: Chapter 194 in definitions of district guaranteed tax base ratio and district mill value per ANB near middle inserted exception clause for new district under 20-6-326. Amendment effective April 12, 2007.

Effective Date — Applicability: Section 7, Ch. 194, L. 2007, provided: “[This act] is effective on passage and approval and applies to the creation of new districts on or after [the effective date of this act].” Approved April 12, 2007.

20-9-367. Eligibility to receive guaranteed tax base aid or state advance or reimbursement for school facilities. (1) If the district guaranteed tax base ratio of any elementary or high school district is less than the corresponding statewide elementary or high school guaranteed tax base ratio, the district may receive guaranteed tax base aid based on the number of mills levied in the district in support of up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement, and up to 40% of the special education allowable cost payment budgeted within the general fund budget.

(2) If the county retirement mill value per elementary ANB or the county retirement mill value per high school ANB is less than the corresponding statewide mill value per elementary ANB or high school ANB, the county may receive guaranteed tax base aid based on the number of mills levied in the county in support of the retirement fund budgets of the respective elementary or high school districts in the county.

(3) For the purposes of 20-9-370 and 20-9-371, if the district mill value per elementary ANB or the district mill value per high school ANB is less than the corresponding statewide mill value

per elementary ANB or statewide mill value per high school ANB, the district may receive a state advance or reimbursement for school facilities in support of the debt service fund.

History: En. Sec. 61, Ch. 11, Sp. L. June 1989; amd. Sec. 8, Ch. 711, L. 1991; amd. Sec. 32, Ch. 767, L. 1991; amd. Sec. 31, Ch. 633, L. 1993; amd. Sec. 2, Ch. 586, L. 1995; amd. Secs. 4, 5, Ch. 211, L. 1999; amd. Sec. 9, Ch. 11, Sp. L. May 2000.

20-9-368. Amount of guaranteed tax base aid. (1) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the elementary school districts in the county is the difference between the county mill value per elementary ANB and the statewide mill value per elementary ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the elementary districts in the county.

(2) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the high school districts in the county is the difference between the county mill value per high school ANB and the statewide mill value per high school ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the high school districts in the county.

(3) The amount of guaranteed tax base aid that a district may receive in support of up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted within the general fund budget, and up to 40% of the special education payment is calculated in the following manner:

(a) multiply the sum of the district's BASE budget amount less direct state aid by the corresponding statewide guaranteed tax base ratio;

(b) subtract the taxable valuation of the district from the product obtained in subsection (3)(a); and

(c) divide the remainder by 1,000 to determine the equivalent to the dollar amount of guaranteed tax base aid for each mill levied.

(4) Guaranteed tax base aid provided to any county or district under this section is earmarked to finance the fund or portion of the fund for which it is provided. If a county or district receives more guaranteed tax base aid than it is entitled to, the excess must be returned to the state as required by 20-9-344.

History: En. Sec. 62, Ch. 11, Sp. L. June 1989; amd. Sec. 9, Ch. 711, L. 1991; amd. Sec. 33, Ch. 767, L. 1991; amd. Sec. 32, Ch. 633, L. 1993; amd. Secs. 6, 7, Ch. 211, L. 1999; amd. Sec. 10, Ch. 11, Sp. L. May 2000.

20-9-369. Duties of superintendent of public instruction and department of revenue. (1) The superintendent of public instruction shall administer the distribution of guaranteed tax base aid by:

(a) providing each school district and county superintendent, by March 1 of each year, with the preliminary statewide and district guaranteed tax base ratios and, by May 1 of each year, with the final statewide and district guaranteed tax base ratios, for use in calculating the guaranteed tax base aid available for the ensuing school fiscal year;

(b) providing each school district and county superintendent, by March 1 of each year, with the preliminary statewide, county, and district mill values per ANB and, by May 1 of each year, with the final statewide, county, and district mill values per ANB, for use in calculating the guaranteed tax base aid and state advance and reimbursement for school facilities available to counties and districts for the ensuing school fiscal year;

(c) requiring each county and district that qualifies and applies for guaranteed tax base aid to report to the county superintendent all budget and accounting information required to administer the guaranteed tax base aid;

(d) keeping a record of the complete data concerning appropriations available for guaranteed tax base aid and the entitlements for the aid of the counties and districts that qualify;

(e) distributing the guaranteed tax base aid entitlement to each qualified county or district from the appropriations for that purpose.

(2) The superintendent shall adopt rules necessary to implement 20-9-366 through 20-9-369.

(3) The department of revenue shall provide the superintendent of public instruction by December 1 of each year a final determination of the taxable value of property within each school

district and county of the state reported to the department of revenue based on information delivered to the county clerk and recorder as required in 15-10-305.

(4) The superintendent of public instruction shall calculate the district and statewide guaranteed tax base ratios by applying the prior year's direct state aid payment.

History: En. Sec. 63, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 790, L. 1991; amd. Sec. 34, Ch. 633, L. 1993; amd. Sec. 3, Ch. 586, L. 1995.

20-9-370. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "School facility entitlement" means:

(a) \$300 per ANB for an elementary school district;

(b) \$450 per ANB for a high school district; or

(c) \$370 per ANB for an approved and accredited junior high school or middle school.

(2) "State advance for school facilities" is the amount of state equalization aid distributed to an eligible district to pay the debt service obligation for a bond in the first school fiscal year in which a debt service payment is due for the bond.

(3) "State reimbursement for school facilities" means the amount of state equalization aid distributed to a district that:

(a) has a district mill value per ANB that is less than the corresponding facility guaranteed mill value per ANB; and

(b) has a debt service obligation in the ensuing school year on bonds.

(4) "Total school facility entitlement" means the school facility entitlement times the total ANB for the district.

History: En. Sec. 38, Ch. 633, L. 1993; amd. Sec. 38, Ch. 18, L. 1995; amd. Sec. 4, Ch. 586, L. 1995; amd. Sec. 5, Ch. 550, L. 2003.

20-9-371. Calculation and uses of school facility entitlement amount. (1) The state reimbursement for school facilities for a district is the percentage determined in 20-9-346(2)(b) times (1-(district mill value per ANB/facility guaranteed mill value per ANB)) times the lesser of the total school facility entitlement calculated under the provisions of 20-9-370 or the district's current year debt service obligations on general obligation bonds that qualify under the provisions of 20-9-370(3).

(2) The state advance for school facilities for a district is determined as follows:

(a) Calculate the percentage of the district's debt service payment that will be advanced by the state using the district ANB, the district mill value and the statewide mill value for the current year, and the percentage used to determine the proportionate share of state reimbursement for school facilities in the prior year.

(b) Multiply the percentage determined in subsection (2)(a) by the lesser of the total school facility entitlement calculated under the provisions of 20-9-370 or the district's current year debt service obligation for general obligation bonds to which the state advance applies.

(3) Within the available appropriation, the superintendent of public instruction shall first distribute to eligible districts the state advance for school facilities. From the remaining appropriation, the superintendent shall distribute to eligible districts the state reimbursement for school facilities.

(4) The trustees of a district may apply the state reimbursement for school facilities to reduce the levy requirement in the ensuing school fiscal year for all outstanding bonded indebtedness on general obligation bonds sold in the debt service fund of the district. The trustees may apply the state advance for school facilities to reduce the levy requirement in the current school fiscal year for debt service payments on general obligation bonds to which the state advance for school facilities applies.

History: En. Sec. 39, Ch. 633, L. 1993; amd. Sec. 5, Ch. 586, L. 1995; amd. Sec. 1, Ch. 492, L. 2003; amd. Sec. 6, Ch. 550, L. 2003.

Cross-References

Duty of Superintendent of Public Instruction to distribute state and county equalization aid, 20-9-346.

20-9-372 through 20-9-374 reserved.

20-9-375. Repealed. Sec. 22, Ch. 462, L. 2005.

History: En. Sec. 3, Ch. 437, L. 1997; amd. Sec. 1, Ch. 474, L. 2001.

Part 4 School Bonds

Part Cross-References

Investment of county money, Title 7, ch. 6, part 27.
Bond issues, Title 17, ch. 5.
Pledge of school bonds to secure deposits of public funds, 17-6-103.

20-9-401. Applicable laws for school district bonding. (1) The school district bonding provisions of this title and all applicable laws of the state shall govern:

- (a) the issuance, refunding, and sale of school district bonds;
- (b) the levying of taxes for payment of the principal and interest on school district bonds; and
- (c) the redemption of bonds.

(2) Should there be a conflict between the provisions of this title and the provisions of any other law of the state, the provisions of this title shall govern.

History: En. 75-7101 by Sec. 302, Ch. 5, L. 1971; R.C.M. 1947, 75-7101.

Cross-References

Property tax levies, Title 15, ch. 10.
Refunding bonds, Title 17, ch. 5, part 3.

20-9-402. Definition of school district for bonding purposes. For the purposes of inebting an elementary district, a high school district, or a community college district by the issuance of bonds under the provisions of this title, the term "school district" means any elementary district, high school district, county high school district, or community college district.

History: En. 75-7102 by Sec. 303, Ch. 5, L. 1971; amd. Sec. 1, Ch. 419, L. 1973; R.C.M. 1947, 75-7102; amd. Sec. 19, Ch. 219, L. 1997.

20-9-403. Bond issues for certain purposes. (1) The trustees of a school district may issue and negotiate general obligation bonds or impact aid bonds of the school district for the purpose of:

- (a) building, altering, repairing, buying, furnishing, equipping, purchasing lands for, or obtaining a water supply for a school, teacherage, dormitory, gymnasium, other building, or combination of buildings for school purposes;
- (b) buying a school bus or buses;
- (c) providing the necessary money to redeem matured bonds, maturing bonds, or coupons appurtenant to bonds when there is not sufficient money to redeem them;
- (d) providing the necessary money to redeem optional or redeemable bonds when it is for the best interest of the school district to issue refunding bonds;
- (e) funding a judgment against the district, including the repayment of tax protests lost by the district; or
- (f) funding a debt service reserve account that may be required for impact aid revenue bonds.

(2) Money realized from the sale of bonds issued on the credit of a high school district may not be used for any of the purposes listed in subsection (1) in an elementary school district, and the money may be used for any of the purposes listed in subsection (1) for a junior high school but only to the extent that the 9th grade of the high school is served.

History: En. 75-7103 by Sec. 304, Ch. 5, L. 1971; amd. Sec. 1, Ch. 76, L. 1973; amd. Sec. 1, Ch. 189, L. 1973; R.C.M. 1947, 75-7103; amd. Sec. 23, Ch. 658, L. 1987; amd. Sec. 8, Ch. 213, L. 1989; amd. Sec. 2, Ch. 492, L. 2003.

Cross-References

Sale of notes in anticipation of federal or state revenue or issuance of bonds, 7-7-109.
Vote unnecessary if bond issue authorized, 20-6-603.

20-9-404. Contracts and bonds for joint construction. (1) The trustees of a school district may enter into a contract with the trustees of any school district within the county, with any school district in an adjoining county, with the governing body of another political subdivision within the county in which the school district is located, or with the governing body of a political subdivision of a county adjoining the school district to provide for the joint construction of a facility upon terms and conditions mutually agreed upon between the districts.

(2) The trustees of any district executing a contract in accordance with this section may, subject to 15-10-420, levy taxes and issue bonds for the purpose of constructing the facilities authorized by this section.

History: En. 75-7103.1 by Sec. 1, Ch. 371, L. 1975; R.C.M. 1947, 75-7103.1; amd. Sec. 2, Ch. 397, L. 1997; amd. Sec. 1, Ch. 166, L. 1999; amd. Sec. 114, Ch. 584, L. 1999.

Cross-References

Interlocal Agreements, Title 7, ch. 11, part 1.

20-9-405. Proportional joint ownership — disposition of money. The facility constructed under 20-9-404 must be jointly owned by the school districts or other political subdivisions contributing to its construction in proportion to the contribution of each political subdivision. The sale or other disposition of a district's interest in the facility must be made in accordance with 20-6-604. Money received from the sale or disposition of a district's interest in a facility must be credited to the debt service fund, building fund, general fund, or any combination of these three funds, at the discretion of the trustees.

History: En. 75-7103.2 by Sec. 2, Ch. 371, L. 1975; R.C.M. 1947, 75-7103.2; amd. Sec. 3, Ch. 397, L. 1997; amd. Sec. 2, Ch. 166, L. 1999.

20-9-406. Limitations on amount of bond issue — definition of federal impact aid basic support payment. (1) (a) Except as provided in subsection (1)(d), the maximum amount for which an elementary district or a high school district may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471 and 20-9-502, and any other loans or notes payable that are held as general obligations of the district, is 50% of the taxable value of the property subject to taxation, as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(b) Except as provided in subsection (1)(d), the maximum amount for which a K-12 school district, as formed pursuant to 20-6-701, may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471 and 20-9-502, and any other loans or notes payable that are held as general obligations of the district, is up to 100% of the taxable value of the property subject to taxation, as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(c) The total indebtedness of the high school district with an attached elementary district is limited to the sum of 50% of the taxable value of the property for elementary school program purposes and 50% of the taxable value of the property for high school program purposes.

(d) (i) The maximum amount for which an elementary district or a high school district with a district mill value per elementary ANB or per high school ANB that is less than the facility guaranteed mill value per elementary ANB or high school ANB under 20-9-366 may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471 and 20-9-502, and any other loans or notes payable that are held as general obligations of the district, is 50% of the corresponding facility guaranteed mill value per ANB times 1,000 times the ANB of the district. For a K-12 district, the maximum amount for which the district may become indebted is 50% of the sum of the facility guaranteed mill value per elementary ANB times 1,000 times the elementary ANB of the district and the facility guaranteed mill value per high school ANB times 1,000 times the high school ANB of the district. For the purpose of calculating ANB under this subsection, a district may use the greater of the current year ANB or the 3-year ANB calculated under 20-9-311.

(ii) If mutually agreed upon by the affected districts, for the purpose of calculating its maximum bonded indebtedness under this subsection (1)(d), a district may include the ANB of the district plus the number of students residing within the district for which the district or county pays tuition for attendance at a school in an adjacent district. The receiving district may not use out-of-district ANB for the purpose of calculating its maximum indebtedness if the out-of-district ANB has been included in the ANB of the sending district pursuant to the mutual agreement. For the purpose of calculating ANB under this subsection, a district may use the greater of the current year ANB or the 3-year ANB calculated under 20-9-311.

(2) The maximum amounts determined in subsection (1) do not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district or to general obligation bonds issued for the repayment of tax protests lost by the district. All general obligation bonds issued in excess of the amount are void, except as provided in this section.

(3) The maximum amount of impact aid revenue bonds that an elementary district, high school district, or K-12 school district may issue may not exceed a total aggregate amount equal to three times the average of the school district's annual federal impact aid basic support payments for the 5 years immediately preceding the issuance of the bonds. However, at the time of issuance of the bonds, the average annual payment of principal and interest on the impact aid bonds each year may not exceed 35% of the total federal impact aid basic support payments of the school district for the current year.

(4) When the total indebtedness of a school district has reached the limitations prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

(5) Whenever bonds are issued for the purpose of refunding bonds, any money to the credit of the debt service fund for the payment of the bonds to be refunded is applied toward the payment of the bonds and the refunding bond issue is decreased accordingly.

(6) As used in this part, "federal impact aid basic support payment" means the annual impact aid revenue received by a district under 20 U.S.C. 7703(b) but excludes revenue received for impact aid special education under 20 U.S.C. 7703(d) and impact aid construction under 20 U.S.C. 7707.

History: En. 75-7104 by Sec. 305, Ch. 5, L. 1971; amd. Sec. 3, Ch. 33, L. 1973; amd. Sec. 32, Ch. 100, L. 1973; amd. Sec. 1, Ch. 353, L. 1974; amd. Sec. 1, Ch. 56, L. 1975; amd. Sec. 1, Ch. 432, L. 1975; amd. Sec. 46, Ch. 566, L. 1977; R.C.M. 1947, 75-7104(1), (2); amd. Sec. 61, Ch. 614, L. 1981; amd. Sec. 12, Ch. 213, L. 1989; amd. Sec. 7, Ch. 555, L. 1991; amd. Sec. 34, Ch. 767, L. 1991; amd. Sec. 35, Ch. 633, L. 1993; amd. Sec. 15, Ch. 570, L. 1995; amd. Sec. 6, Ch. 586, L. 1995; amd. Sec. 23, Ch. 285, L. 1999; amd. Sec. 37, Ch. 426, L. 1999; amd. Sec. 30, Ch. 556, L. 1999; amd. Sec. 1, Ch. 10, L. 2001; amd. Sec. 3, Ch. 492, L. 2003; amd. Sec. 18, Ch. 462, L. 2005; amd. Sec. 1, Ch. 279, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 279 in (1)(a) near end increased elementary and high school district debt limit from 45% to 50% of taxable value; in (1)(b) near end increased K-12 district debt limit from 90% to 100% of taxable value; in (1)(c) in two places increased total indebtedness of high school district with attached elementary district from 45% to 50% of taxable value for elementary program and high school program purposes; and in (1)(d)(i) near end of first sentence increased debt limit for elementary or high school ANB from 45% to 50% for facility guaranteed mill value, in second sentence increased debt limit for K-12 ANB from 45% to 50% for facility guaranteed mill value, and inserted third sentences in (1)(d)(i) and (1)(d)(ii) allowing district to use the greater of current year ANB or 3-year averaging for purposes of calculating ANB. Amendment effective July 1, 2007.

Cross-References

Refunding bonds, Title 17, ch. 5, part 3.

20-9-407. Industrial facility agreement for bond issue in excess of maximum. (1) In a school district within which a new major industrial facility that seeks to qualify for taxation as class five property under 15-6-135 is being constructed or is about to be constructed, the school district may require, as a precondition of the new major industrial facility qualifying as class five property, that the owners of the proposed industrial facility enter into an agreement with the school district concerning the issuing of bonds in excess of the 50% limitation prescribed in 20-9-406. Under an agreement, the school district may, with the approval of the voters, issue bonds that exceed the limitation prescribed in this section by a maximum of 50% of the estimated taxable value of the property of the new major industrial facility subject to taxation when completed. The estimated taxable value of the property of the new major industrial facility subject to taxation must be computed by the department of revenue when requested to do so by a resolution of the board of trustees of the school district. A copy of the department's statement of estimated taxable value must be printed on each ballot used to vote on a bond issue proposed under this section.

(2) Pursuant to the agreement between the new major industrial facility and the school district and as a precondition to qualifying as class five property, the new major industrial facility and its owners shall pay, in addition to the taxes imposed by the school district on

property owners generally, as much of the principal and interest on the bonds provided for under this section as represents payment on an indebtedness in excess of the limitation prescribed in 20-9-406. After the completion of the new major industrial facility and when the indebtedness of the school district no longer exceeds the limitation prescribed in this section, the new major industrial facility is entitled, after all the current indebtedness of the school district has been paid, to a tax credit over a period of no more than 20 years. The credit must as a total amount be equal to the amount that the facility paid the principal and interest of the school district's bonds in excess of its general liability as a taxpayer within the district.

(3) A major industrial facility is a facility subject to the taxing power of the school district, whose construction or operation will increase the population of the district, imposing a significant burden upon the resources of the district and requiring construction of new school facilities. A significant burden is an increase in ANB of at least 20% in a single year.

History: En. 75-7104 by Sec. 305, Ch. 5, L. 1971; amd. Sec. 3, Ch. 33, L. 1973; amd. Sec. 32, Ch. 100, L. 1973; amd. Sec. 1, Ch. 353, L. 1974; amd. Sec. 1, Ch. 56, L. 1975; amd. Sec. 1, Ch. 432, L. 1975; amd. Sec. 46, Ch. 566, L. 1977; R.C.M. 1947, 75-7104(3) thru (5); amd. Sec. 26, Ch. 693, L. 1979; amd. Sec. 3, Ch. 15, L. 1985; amd. Sec. 2, Ch. 279, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 279 in (1) in first and second sentences increased bond debt limit from 45% to 50%; and made minor changes in style. Amendment effective July 1, 2007.

Cross-References

ANB defined, 20-1-101.

Educational impact statements, 20-1-208.

Calculation of average number belonging, 20-9-311.

20-9-408. Definition of forms of bonds. As used in this part, the following definitions apply:

(1) "Amortization bond" means that form of bond on which a part of the principal is required to be paid each time that interest becomes due and payable. The part payment of principal increases with each following installment in the same amount that the interest payment decreases, so that the combined amount payable on principal and interest is the same on each payment date. However, the payment on the initial interest payment date may be less or greater than the amount of other payments on the bond, reflecting the payment of interest only or the payment of interest for a period different from that between other interest payment dates. The final payment may vary from prior payments in amount as a result of rounding prior payments.

(2) "General obligation bonds" means bonds that pledge the full faith and credit and the taxing power of a school district.

(3) "Impact aid revenue bonds" means bonds that pledge and are payable solely from federal impact aid basic support payments received and deposited to the credit of the fund established in 20-9-514.

(4) "Serial bonds" means a bond issue payable in annual installments of principal commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing or subject to mandatory sinking fund redemption in each installment, commencing with the installment payable in the fourth year after the date of issue, not exceeding three times the principal amount of the bonds payable in the immediately preceding installment.

History: En. 75-7105 by Sec. 306, Ch. 5, L. 1971; R.C.M. 1947, 75-7105; amd. Sec. 7, Ch. 631, L. 1983; amd. Sec. 7, Ch. 256, L. 1989; amd. Sec. 40, Ch. 423, L. 1995; amd. Sec. 4, Ch. 492, L. 2003; amd. Sec. 18, Ch. 451, L. 2005; amd. Sec. 24, Ch. 44, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 44 in definition of impact aid revenue bonds near end after "credit of the" substituted "fund" for "account"; and made minor changes in style. Amendment effective October 1, 2007.

20-9-409. Repealed. Sec. 52, Ch. 423, L. 1995.

History: En. 75-7106 by Sec. 307, Ch. 5, L. 1971; R.C.M. 1947, 75-7106.

20-9-410. Limitation of term and interest — timing for redemption. (1) School district bonds may not be issued for a term longer than 20 years, except that bonds issued to refund or redeem outstanding bonds may not be issued for a term longer than 10 years unless the unexpired term of the bonds to be refunded or redeemed is in excess of 10 years, in which case the refunding or redeeming bonds may be issued for the unexpired term. Other than refunding or

redeeming bonds, all bonds issued for a longer term than 5 years must be redeemable at the option of the school district on any interest payment date after one-half of the term for which they were issued has expired, and the redemption option must be stated on the face of the bonds. The interest must be as provided under 17-5-102 and must be payable semiannually.

(2) For purposes of this section, the term of a bond issue commences on July 1 of the fiscal year in which the school district first levies taxes to pay the principal and interest on the bonds.

History: En. 75-7107 by Sec. 308, Ch. 5, L. 1971; amd. Sec. 7, Ch. 234, L. 1971; amd. Sec. 3, Ch. 284, L. 1973; R.C.M. 1947, 75-7107; amd. Sec. 11, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 71, Ch. 370, L. 1987; amd. Sec. 8, Ch. 256, L. 1989; amd. Sec. 19, Ch. 451, L. 2005.

20-9-411. Dates of issue and payments. In order that the dates of payment of installments on school district bond issues may coincide as nearly as possible with the largest monthly tax collections, all school district bonds shall preferably bear a date of some day in June or December. For this reason, the bonds may be dated back not more than 5 months from the time of the actual sale, but no interest shall be charged on these bonds before they have been delivered to the purchaser and payment has been made by the purchaser. Interest accrued on such bonds according to their terms at the time of delivery shall either be refunded by the purchaser or deducted from the first interest payments. The failure to date such bonds in June or December shall not affect their validity.

History: En. 75-7108 by Sec. 309, Ch. 5, L. 1971; R.C.M. 1947, 75-7108.

20-9-412. Issuance of refunding bonds without election. (1) Bonds of a school district issued for the purpose of providing the money needed to redeem outstanding bonds may be issued without submitting the proposition to the electorate at an election. In order to issue refunding bonds, the trustees, at a regular meeting or a special meeting, shall adopt a resolution setting forth:

- (a) the facts regarding the outstanding bonds that are to be redeemed;
- (b) the reasons for issuing new bonds; and
- (c) the term and details of the new bond issue.

(2) After the adoption of the resolution, the trustees shall:

- (a) sell the bonds at a private negotiated sale; or
- (b) at their option, give notice of the sale of the new bonds in the same manner that notice is required to be given for the sale of bonds authorized at a school election and sell the new bonds in open competitive bidding, by written bids or by sealed bids.

(3) Except for bonds refunded by a school district under the provisions of Title 17, chapter 5, part 16, including any variable rate finance program that is authorized, bonds may not be refunded by the issuance of new bonds unless the rate of interest offered on the new bonds is at least 1/2 of 1% a year less than the rate of interest in the bonds to be refunded or redeemed.

(4) If a refunding bond issue refunds only a portion of an outstanding bond issue, the unrefunded portion of the outstanding bond issue and the refunding bond issue must be treated as a single bond issue for the purposes of 20-9-408.

(5) Refunding bonds may be issued in a principal amount greater than the principal amount of the outstanding bonds if there is a reduction of total debt service cost to the district.

(6) (a) Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which the bonds mature or are subject to redemption, provided that the proceeds of the refunding bonds, less any accrued interest or premium received upon the sale of the bonds, are deposited with other funds appropriated to the payment of the outstanding bonds in escrow with a suitable banking institution in or outside of the state.

(b) Except as provided in subsection (6)(c), funds deposited must be invested in securities that are general obligations of the United States or the principal and interest of which are guaranteed by the United States and that mature or are callable at the option of the holder on the dates and bear interest at the rates and are payable on the dates that are required to provide funds sufficient, with any cash retained in the escrow account, to pay when due the interest to accrue on each bond being refunded to its maturity or redemption date, if called for redemption, to pay the principal of the bond at maturity or upon the redemption date, and to pay any redemption premium.

(c) If the funds initially deposited in escrow are sufficient, without regard to any investment income on those funds, to redeem in full the bonds being refunded as of their redemption date and to pay the principal of and interest and premium on the bonds being refunded at their stated maturities, the funds may be invested in the securities described in subsection (6)(b) or in a money market fund that is composed exclusively of eligible securities described in 7-6-202 and that otherwise satisfies the requirements of 7-6-202(3).

(d) The escrow account must be irrevocably appropriated to the payment of the principal of and interest and redemption premium on the bonds being refunded. Funds in the debt service fund for the payment of the bonds being refunded and not required for the payment of principal of or interest on the bonds being refunded due prior to issuance of the refunding bonds may be appropriated by the district to the escrow account. The school district may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account. Bonds that are refunded pursuant to this part are not to be considered outstanding for purposes of 20-9-406 or any other debt limitation.

History: En. 75-7109 by Sec. 310, Ch. 5, L. 1971; R.C.M. 1947, 75-7109; amd. Sec. 6, Ch. 647, L. 1983; amd. Sec. 1, Ch. 158, L. 1993; amd. Sec. 41, Ch. 423, L. 1995; amd. Sec. 21, Ch. 277, L. 2003.

Cross-References

Counties — advance refunding bonds, 7-7-2316.

Cities — advance refunding bonds, 7-7-4316.

Refunding bonds, Title 17, ch. 5, part 3.

20-9-413 through 20-9-420 reserved.

20-9-421. Election to authorize the issuance of school district bonds and the methods of introduction. A school district shall not issue bonds for any purpose other than that provided in 15-1-402 and 20-9-412 unless the issuance of bonds has been authorized by the qualified electors of the school district at an election called for the purpose of considering a proposition to issue such bonds. A school district bond election shall be called by a resolution as prescribed under the provisions of 20-20-201 when:

- (1) the trustees, of their own volition, adopt a resolution to that effect; or
- (2) the trustees have received a petition which asks that an election be held to consider a bond proposition and which has been validated under the provisions of 20-9-425.

History: En. 75-7110 by Sec. 311, Ch. 5, L. 1971; R.C.M. 1947, 75-7110; amd. Sec. 9, Ch. 213, L. 1989.

Cross-References

Mail ballot elections prohibited, 13-19-104.

School elections, Title 20, ch. 20.

20-9-422. Additional requirements for trustees' resolution calling bond election.

(1) In addition to the requirements for calling an election that are prescribed in 20-20-201 and 20-20-203, the trustees' resolution calling a school district bond election must:

- (a) specify whether the bonds will be general obligation bonds or impact aid revenue bonds;
- (b) fix the exact amount of the bonds proposed to be issued, which may be more or less than the amounts estimated in a petition;
- (c) fix the maximum number of years in which the proposed bonds would be paid;
- (d) in the case of initiation by a petition, state the essential facts about the petition and its presentation; and

(e) state the amount of the state advance for school facilities estimated, pursuant to subsection (2), to be received by the district in the first school fiscal year in which a debt service payment would be due on the proposed bonds.

(2) Prior to the adoption of the resolution calling for a school bond election for a general obligation bond, the trustees of a district may request from the superintendent of public instruction a statement of the estimated amount of state advance for school facilities that the district will receive for debt service payments on the proposed general obligation bonds in the first school fiscal year in which a debt service payment is due. The district shall provide the superintendent with an estimate of the debt service payment due in the first school fiscal year. The superintendent shall estimate the state advance for the general obligation bond issue pursuant to 20-9-371(2).

History: En. 75-7111 by Sec. 312, Ch. 5, L. 1971; R.C.M. 1947, 75-7111; amd. Sec. 7, Ch. 586, L. 1995; amd. Sec. 5, Ch. 492, L. 2003.

20-9-423. Form, contents, and circularization of petition proposing school district bond election. Any petition for the calling of an election on the proposition of issuing school district bonds must:

- (1) specify whether the bonds will be general obligation bonds or impact aid revenue bonds;
- (2) plainly state each purpose of the proposed bond issue and the estimated amount of the bonds that would be issued for each purpose;
- (3) be signed by not less than 20% of the school district electors qualified to vote under the provisions of 20-20-301 in order to constitute a valid petition;
- (4) be a single petition or it may be composed of more than one petition, all being identical in form, and after being circulated and signed, they must be fastened together to form a single petition when submitted to the county registrar;
- (5) be circulated by any one or more qualified electors of the school district; and
- (6) contain an affidavit of each registered elector circulating a petition attached to the portion of the petition circulated. The affidavit must attest to the authenticity of the signatures and that the signers knew the contents of the petition at the time of signing it.

History: En. 75-7112 by Sec. 313, Ch. 5, L. 1971; amd. Sec. 8, Ch. 83, L. 1971; R.C.M. 1947, 75-7112; amd. Sec. 6, Ch. 492, L. 2003.

20-9-424. Validation of petition — election administrator's certificate. (1) The petitioners for a school district bond election shall submit their petition to the county election administrator of the county where the school district is located for validation of the signatures on the petition. The county election administrator shall examine the petition and attach or endorse thereon a certificate which shall state:

- (a) the total number of electors of the school district who are, at the time, qualified to vote under the provisions of 20-20-301;
- (b) which and how many of the individuals whose names are subscribed to the petition possess the qualifications to vote on a bond proposition; and
- (c) whether the number of qualified signers established in subsection (1)(b) is more or less than 20% of the total number of registered electors established in subsection (1)(a).

(2) After completing the examination, the county election administrator shall immediately send the petition and his certificate to the school district. The county election administrator shall not receive compensation for the examination of school district bond petitions.

History: En. 75-7113 by Sec. 314, Ch. 5, L. 1971; amd. Sec. 9, Ch. 83, L. 1971; R.C.M. 1947, 75-7113; amd. Sec. 354, Ch. 571, L. 1979.

Cross-References

Local Election Administrator, Title 13, ch. 1, part 3.

20-9-425. Trustees' consideration of validated petition proposing bond election. When a school district receives a school district bond petition from the county registrar, a meeting of the trustees shall be called for the consideration of the petition. The trustees shall be the judges of the adequacy of the petition, and their findings shall be conclusive against the school district in favor of the innocent holder of bonds issued pursuant to the election called and held by reason of the presentation of such petition. The petition shall be valid if the trustees find that it is in proper form and bears the signatures of not less than 20% of the school district electors who are qualified to vote under the provisions of 20-20-301.

History: En. 75-7114 by Sec. 315, Ch. 5, L. 1971; amd. Sec. 10, Ch. 83, L. 1971; R.C.M. 1947, 75-7114.

Cross-References

Trustees' meetings and quorum, 20-3-322.

20-9-426. Preparation and form of ballots for bond election. (1) The school district shall cause ballots to be prepared for all bond elections, and whenever bonds for more than one purpose are to be voted upon at the same election, separate ballots must be prepared for each purpose.

(2) For bond elections that are not held in conjunction with a school election, the ballots for absentee voting must be printed and made available at least 30 days before the bond election.

(3) All ballots must be substantially in the following form:

OFFICIAL BALLOT
SCHOOL DISTRICT BOND ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words “BONDS—YES” if you wish to vote for the bond issue; if you are opposed to the bond issue, make an X or similar mark in the square before the words “BONDS—NO”.

Shall the board of trustees be authorized to issue and sell (state type of bonds here: general obligation or impact aid revenue) bonds of this school district in the amount of _____ dollars (\$ _____), bearing interest at a rate not more than _____ percent (____%) a year, payable semiannually, during a period not more than _____ years, for the purpose _____ (here state the purpose the same way as in the notice of election)?

☐ BONDS — YES.

☐ BONDS — NO.

History: En. 75-7115 by Sec. 316, Ch. 5, L. 1971; amd. Sec. 39, Ch. 234, L. 1971; R.C.M. 1947, 75-7115; amd. Sec. 12, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 2, Ch. 144, L. 1997; amd. Sec. 7, Ch. 492, L. 2003.

20-9-427. Notice of bond election by separate purpose. (1) A school district bond election must be conducted in accordance with the school election provisions of this title, except that the election notice must be in substantially the following form:

NOTICE OF SCHOOL DISTRICT BOND ELECTION

Notice is hereby given by the trustees of School District No. _____ of _____ County, state of Montana, that pursuant to a certain resolution adopted at a meeting of the board of trustees of the school district held on the _____ day of _____, an election of the registered electors of School District No. _____ of _____ County, state of Montana, will be held on the _____ day of _____, at _____ for the purpose of voting upon the question of whether or not the trustees may issue and sell (state here: general obligation or impact aid revenue) bonds of the school district in the amount of _____ dollars (\$ _____), bearing interest at a rate not more than _____ percent (____%) a year, payable semiannually, for the purpose of _____ (here state purpose). The bonds to be issued will be payable in installments over a period not exceeding _____ (state number) years.

The polls will be open from _____ o'clock __m. and until _____ o'clock __m. of the election day.

Dated and posted this _____ day of _____, _____.

Presiding officer, School District No. _____
of _____ County
Address _____

(2) If the bonds proposed to be issued are for more than one purpose, then each purpose must be separately stated in the notice, together with the proposed amount of bonds for each purpose.

(3) The notice must specify whether the bonds will be general obligation bonds or impact aid revenue bonds.

History: En. 75-7116 by Sec. 317, Ch. 5, L. 1971; amd. Sec. 40, Ch. 234, L. 1971; amd. Sec. 1, Ch. 176, L. 1973; R.C.M. 1947, 75-7116; amd. Sec. 13, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 42, Ch. 423, L. 1995; amd. Sec. 8, Ch. 492, L. 2003.

Cross-References

School elections, Title 20, ch. 20.

20-9-428. Determination of approval or rejection of proposition at bond election.

(1) When the trustees canvass the vote of a school district bond election under the provisions of 20-20-415, they shall determine the approval or rejection of the school bond proposition in the following manner:

(a) If the school district bond election is held at a regular school election or at a special election called by the trustees, the trustees shall:

(i) determine the total number of electors of the school district who are qualified to vote under the provisions of 20-20-301 from the list of electors supplied by the county registrar for the school bond election;

(ii) determine the total number of qualified electors voting at the school bond election from the tally sheets for the election; and

(iii) calculate the percentage of qualified electors voting at the school bond election by dividing the amount determined in subsection (1)(a)(ii) by the amount determined in subsection (1)(a)(i).

(b) When the calculated percentage in subsection (1)(a)(iii) is:

(i) 40% or more, the school bond proposition is approved and adopted if a majority of the votes were cast in favor of the proposition, otherwise it is rejected;

(ii) more than 30% but less than 40%, the school bond proposition is approved and adopted if 60% or more of the votes were cast in favor of the proposition, otherwise it is rejected; or

(iii) 30% or less, the school bond proposition is rejected.

(c) If the school district bond election is held at a general election, at an election that is conducted by mail ballot, as provided in Title 13, chapter 19, or at a special election that is held in conjunction with a regular or primary election, the determination of the approval or rejection of the bond proposition is made by a majority of the votes cast on the issue.

(2) If the canvass of the vote establishes the approval and adoption of the school bond proposition, the trustees shall issue a certificate proclaiming the passage of the proposition and the authorization to issue bonds of the school district for the purposes specified on the ballot for the school district bond election.

History: En. 75-7117 by Sec. 318, Ch. 5, L. 1971; amd. Sec. 11, Ch. 83, L. 1971; R.C.M. 1947, 75-7117; amd. Sec. 3, Ch. 503, L. 2005.

Cross-References

Cancellation and challenge of voter registration, Title 13, ch. 2, part 4.

Challenge of elector's right to vote, Title 13, ch. 13, part 3.

General canvassing requirements, Title 13, ch. 15.

20-9-429. Trustees' resolution to issue school district bonds. Anytime after the date of the election certificate, the trustees shall adopt a resolution calling for the sale of bonds of the school district. The resolution must specify:

(1) the number of series or installments in which the bonds are to be issued;

(2) the amount of bonds to be issued;

(3) the minimum purchase price of the bonds;

(4) the purpose or purposes of the issue;

(5) the date that the issue will bear;

(6) the period of time through which the issue will be paid;

(7) the manner of execution of the bonds;

(8) whether bids will be accepted for either serial or amortization bonds and, if so, the denomination of serial or amortization bonds;

(9) the date and time that the sale of the bonds must be conducted; and

(10) the minimum price fixed by the board of trustees for the bonds, which may not be less than 97% of the principal amount of the bonds if the board determines that the sale is in the best interests of the district.

History: En. 75-7118 by Sec. 319, Ch. 5, L. 1971; R.C.M. 1947, 75-7118; amd. Sec. 43, Ch. 423, L. 1995.

20-9-430. Notice of sale of school district bonds. The trustees shall give notice of the sale of school district bonds. The notice must state the purpose for which the bonds are to be issued and the amount proposed to be issued and must be substantially in the following form:

NOTICE OF SALE OF SCHOOL DISTRICT BONDS

Notice is hereby given by the trustees of School District No. _____ of _____ County, state of Montana, that the trustees will on the _____ day of _____, at the hour of _____ o'clock ____ m. at _____, in the school district, sell to the highest and best bidder for cash (state here: general obligation or impact aid revenue) bonds of the school district in the total amount of _____ dollars (\$ _____), for the purpose of _____.

The bonds will be issued and sold in the aggregate principal amount of _____ dollars (\$ _____) each and will become payable according to the maturity schedule set forth below (set forth maturity schedule adopted by the school district). (If the bonds are to be issued as amortization bonds, indicate that here.)

The bonds will bear an original issue date of _____, _____, will pay interest commencing on the _____ day of _____ (month), _____, will be payable semiannually on the _____ day of _____ (month) and _____ (month) in each year thereafter, and will be redeemable in full. (Here insert optional provisions, if any, to be recited on the bonds.)

The bonds will be sold for not less than \$ _____, with accrued interest on the principal amount of the bonds to the date of their delivery, and all bidders shall state the lowest rate of interest at which they will purchase the bonds at the price specified for the bonds. The trustees reserve the right to reject any bids and to sell the bonds at private sale.

All bids must be accompanied by (insert appropriate bid security as permitted by 18-1-202) in the sum of _____ dollars (\$ _____) payable to the order of the district, which will be forfeited by the successful bidder in the event that the bidder refuses to purchase the bonds.

All bids should be addressed to the undersigned district.

Presiding officer, School District No. _____
of _____ County
Address: _____

ATTEST:

Subscribed and sworn to before me this _____ day of _____, _____; _____ Notary Public for the State residing at _____, Montana. My commission expires _____.

History: En. 75-7119 by Sec. 320, Ch. 5, L. 1971; amd. Sec. 41, Ch. 234, L. 1971; amd. Sec. 23, Ch. 266, L. 1977; R.C.M. 1947, 75-7119; amd. Sec. 14, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 8, Ch. 631, L. 1983; amd. Sec. 44, Ch. 423, L. 1995; amd. Sec. 9, Ch. 492, L. 2003.

20-9-431. Publication of notice of sale of school district bonds. The trustees shall publish the notice of sale of the bonds, as provided in 17-5-106, in one or more newspapers as determined by the trustees.

History: En. 75-7120 by Sec. 321, Ch. 5, L. 1971; R.C.M. 1947, 75-7120; amd. Sec. 6, Ch. 384, L. 1979; amd. Sec. 4, Ch. 173, L. 1987; amd. Sec. 45, Ch. 423, L. 1995.

20-9-432. Sale of school district bonds. (1) The trustees shall meet at the time and place fixed in the notice to consider bids on the bond issue. The bonds must be sold at not less than the minimum bid specified for bonds with accrued interest to date of delivery, and each bidder shall specify the rate of interest and purchase price at which the bidder will purchase the bonds. The trustees shall accept the bid that they judge most advantageous to the school district. Consultant fees and attorney fees may be paid to any person or corporation for assisting in the proceedings, in the preparation of the bonds, or in negotiating the sale. The trustees are authorized to reject any bids and to sell the bonds at private sale if they consider it in the best interests of the school district, except that the bonds may not be sold at less than the minimum sale price with accrued interest to date of delivery.

(2) The trustees may cooperate and combine with other school districts within the same county for the purpose of preparing and negotiating the sale of bond issues if, in the opinion of the trustees, the cooperation or combination will facilitate the sale of school district bonds under more advantageous terms or with lower interest rates. However, bond issues prepared or negotiated for sale under this section may not be combined for any other purpose but must be entered separately on the books of the county treasurer and must be otherwise treated as separate bond issues.

History: En. 75-7121 by Sec. 322, Ch. 5, L. 1971; amd. Sec. 10, Ch. 234, L. 1971; amd. Sec. 1, Ch. 66, L. 1974; R.C.M. 1947, 75-7121; amd. Sec. 9, Ch. 631, L. 1983; amd. Sec. 46, Ch. 423, L. 1995.

20-9-433. Form and execution of school district bonds. (1) At the time of the sale of the bonds or at a meeting held after the sale, the trustees shall adopt a resolution or indenture of trust providing for the issuance of the bonds, prescribing the form of the bonds, whether amortization or serial bonds, and prescribing the manner of execution of the bonds.

(2) Each bond and coupon attached to a bond must be signed by or bear the facsimile signatures of the presiding officer of the trustees and the school district clerk, provided that one signature of a school official or the bond registrar must be a manual signature.

History: En. 75-7122 by Sec. 323, Ch. 5, L. 1971; R.C.M. 1947, 75-7122; amd. Sec. 7, Ch. 384, L. 1979; amd. Sec. 47, Ch. 423, L. 1995; amd. Sec. 10, Ch. 492, L. 2003.

20-9-434. Registration of school district bonds by county treasurer and copy for preservation. (1) When the school district bonds have been executed by the presiding officer of the trustees and the school district clerk, the bonds must be registered by the county treasurer in the treasurer's bond registration book before the bonds are delivered to the purchaser. The bond registration must show:

- (a) the date of issue;
- (b) the redeemable date of each bond; and
- (c) the amount and due date of all payments required on the bonds.

(2) The trustees shall provide the county treasurer with an unsigned and canceled printed specimen copy of each issue of school district bonds for preservation in the office of the county treasurer.

History: En. 75-7123 by Sec. 324, Ch. 5, L. 1971; R.C.M. 1947, 75-7123; amd. Sec. 48, Ch. 423, L. 1995.

20-9-435. Delivery of school district bonds and disposition of sale money. (1) After the school district bonds have been registered, the county treasurer shall:

(a) when the board of investments has purchased the bonds, forward the bonds to the board that, in turn, shall send the bonds to the state treasurer and shall pay the bonds in the manner provided by law; or

(b) if the purchaser is anybody other than the board of investments, deliver the bonds to the purchaser when full payment of the bonds has been made by the purchaser.

(2) If any of the trustees fails or refuses to pay into the proper county treasury the money arising from the sale of a bond, the trustee is guilty of a felony and shall be punished by imprisonment in the state prison for not less than 1 year or more than 10 years or by a fine of not more than \$50,000, or both.

(3) All money realized from the sale of school district bonds must be paid to the county treasurer. The county treasurer shall credit the money to the building fund of the school district issuing the bonds, except money realized for accrued interest or the purposes defined in 20-9-403(1)(c) and (1)(d) must be deposited in the debt service fund and money realized for the purposes authorized in 20-9-403(1)(e) must be deposited in a fund, as provided for in 2-9-316, to pay a final judgment against the school district. The money realized from the sale of school district bonds must be immediately available to the school district, and the trustees may expend the money without budgeted authorization only for the purposes for which the bonds were authorized by the school district bond election.

History: En. 75-7124 by Sec. 325, Ch. 5, L. 1971; R.C.M. 1947, 75-7124; amd. Sec. 8, Ch. 384, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 9, Ch. 568, L. 1991; amd. Sec. 35, Ch. 767, L. 1991; amd. Sec. 20, Ch. 219, L. 1997.

20-9-436. County attorney to assist in the proceedings. The trustees of any school district conducting bond proceedings shall prepare and maintain a transcript of their bond proceedings. It is a part of the official duties of the county attorney of every county of this state to advise and assist the trustees of each school district of his county in its bond proceedings. Before any transcript of school district bond proceedings is sent to the board of investments, he shall carefully examine such transcript, and the transcript may not be sent until he has attached his opinion to the transcript that the proceedings are in full compliance with law. The trustees of any school district, however, may, upon consent of the county attorney, employ any attorney licensed in Montana to assist the county attorney in the performance of his duties.

History: En. 75-7125 by Sec. 326, Ch. 5, L. 1971; amd. Sec. 1, Ch. 263, L. 1971; R.C.M. 1947, 75-7125; amd. Sec. 9, Ch. 384, L. 1979.

Cross-References

Conflict of interest, 20-1-205.

20-9-437. School district liable on bonds. (1) The full faith, credit, and taxable resources of a school district issuing general obligation bonds under the provisions of this title are pledged for the repayment of the bonds with interest according to the terms of the bonds. For the purpose

of making the provisions of this part enforceable, each school district is a body corporate that may sue and be sued by or in the name of the trustees of the school district.

(2) A school district may use up to 25% of its federal impact aid funds received pursuant to 20-9-514 for repayment of general obligation bonds.

(3) Impact aid revenue bonds must be payable solely from the federal impact aid basic support payment received by the school district and deposited to the credit of the impact aid fund established in 20-9-514 and do not constitute a general obligation of the school district. The school district's taxing power is not pledged for the repayment of impact aid revenue bonds.

History: En. 75-7126 by Sec. 327, Ch. 5, L. 1971; R.C.M. 1947, 75-7126; amd. Sec. 1, Ch. 549, L. 2001; amd. Sec. 11, Ch. 492, L. 2003.

Cross-References

Claims and actions against political subdivisions, Title 2, ch. 9, part 3.

20-9-438. Preparation of general obligation debt service fund budget — operating reserve. (1) The trustees of each school district having outstanding general obligation bonds shall include in the debt service fund of the final budget adopted in accordance with 20-9-133 an amount of money that is necessary to pay the interest and the principal amount becoming due during the ensuing school fiscal year for each series or installment of bonds, according to the terms and conditions of the bonds and the redemption plans of the trustees.

(2) The trustees shall also include in the debt service fund of the final budget:

(a) the amount of money necessary to pay the special improvement district assessments levied against the school district that become due during the ensuing school fiscal year; and

(b) a limited operating reserve for the school fiscal year following the ensuing school fiscal year as provided in subsection (3).

(3) At the end of each school fiscal year, the trustees of a school district may designate a portion of the end-of-the-year fund balance of the debt service fund to be earmarked as a limited operating reserve for the purpose of paying, whenever a cash flow shortage occurs, debt service fund warrants and bond obligations that must be paid from July 1 through November 30 of the school fiscal year following the ensuing school fiscal year. Any portion of the debt service fund end-of-the-year fund balance not earmarked for limited operating reserve purposes must be reappropriated to be used for property tax reduction as provided in 20-9-439.

(4) The county superintendent shall compare the final budgeted amount for the debt service fund with the bond retirement and interest requirement and the special improvement district assessments for the school fiscal year just beginning as reported by the county treasurer in the statement supplied under the provisions of 20-9-121. If the county superintendent finds that the requirement stated by the county treasurer is more than the final budget amount, the county superintendent shall increase the budgeted amount for interest or principal in the debt service fund of the final budget. The amount confirmed or revised by the county superintendent is the final budget expenditure amount for the debt service fund of the school district.

History: En. 75-7127 by Sec. 328, Ch. 5, L. 1971; amd. Sec. 2, Ch. 432, L. 1975; R.C.M. 1947, 75-7127; amd. Sec. 1, Ch. 132, L. 1987; amd. Sec. 36, Ch. 767, L. 1991; amd. Sec. 9, Ch. 211, L. 1997; amd. Sec. 12, Ch. 492, L. 2003.

20-9-439. Computation of net levy requirement for general obligation bonds — procedure when levy inadequate. Subject to 20-6-326, the following provisions apply:

(1) The county superintendent shall compute the levy requirement for each school district's general obligation debt service fund on the basis of the following procedure:

(a) Determine the total money available in the debt service fund for the reduction of the property tax on the district by totaling:

(i) the end-of-the-year fund balance in the debt service fund, less any limited operating reserve as provided in 20-9-438;

(ii) anticipated interest to be earned by the investment of debt service cash in accordance with the provisions of 20-9-213(4) or by the investment of bond proceeds under the provisions of 20-9-435;

(iii) any state advance for school facilities distributed to a qualified district under the provisions of 20-9-346, 20-9-370, and 20-9-371;

(iv) funds transferred from the impact aid fund established pursuant to 20-9-514 that are authorized by 20-9-437(2) to be used to repay the district's bonds; and

(v) any other money, including money from federal sources, anticipated by the trustees to be available in the debt service fund during the ensuing school fiscal year from sources such as legally authorized money transfers into the debt service fund or from rental income, excluding any guaranteed tax base aid.

(b) Subtract the total amount available to reduce the property tax, determined in subsection (1)(a), from the final budget for the debt service fund as established in 20-9-438.

(2) The net debt service fund levy requirement determined in subsection (1)(b) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the net debt service fund levy requirement for the district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(3) If the board of county commissioners fails in any school fiscal year to make a levy for any issue or series of bonds of a school district sufficient to raise the money necessary for payment of interest and principal becoming due during the next ensuing school fiscal year, in any amounts established under the provisions of this section, the holder of any bond of the issue or series or any taxpayer of the district may apply to the district court of the county in which the school district is located for a writ of mandate to compel the board of county commissioners of the county to make a sufficient levy for payment purposes. If, upon the hearing of the application, it appears to the satisfaction of the court that the board of county commissioners of the county has failed to make a levy or has made a levy that is insufficient to raise the amount required to be raised as established in the manner provided in this section, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring the board of county commissioners, at the next meeting for the purpose of fixing tax levies for county purposes, to fix and make a levy against all taxable property in the school district that is sufficient to raise the amount of the deficiency. The levy is in addition to any levy required to be made at that time for the ensuing school fiscal year. Any costs that may be allowed or awarded the petitioner in the proceeding must be paid by the members of the board of county commissioners and may not be a charge against the school district or the county.

History: En. 75-7128 by Sec. 329, Ch. 5, L. 1971; R.C.M. 1947, 75-7128; amd. Sec. 2, Ch. 132, L. 1987; amd. Sec. 37, Ch. 767, L. 1991; amd. Sec. 8, Ch. 133, L. 1993; amd. Sec. 36, Ch. 633, L. 1993; amd. Sec. 8, Ch. 586, L. 1995; amd. Sec. 2, Ch. 549, L. 2001; amd. Sec. 13, Ch. 492, L. 2003; amd. Sec. 4, Ch. 194, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 194 inserted introductory clause referring to 20-6-326. Amendment effective April 12, 2007.

Effective Date — Applicability: Section 7, Ch. 194, L. 2007, provided: "[This act] is effective on passage and approval and applies to the creation of new districts on or after [the effective date of this act]." Approved April 12, 2007.

Cross-References

Property tax levies, Title 15, ch. 10.
Mandamus, Title 27, ch. 26.

20-9-440. Payment of debt service obligations — termination of interest. (1) The school district shall provide the county treasurer with a general obligation bond or impact aid revenue bond debt services schedule. The county treasurer shall maintain a separate debt service fund for each school district and, if bonds are to be issued as impact aid revenue bonds, a separate impact aid revenue bond debt service fund and an impact aid revenue bond debt service reserve account, if required, and shall credit all tax money or impact aid revenue collected for debt service to the appropriate fund and use the money credited to the fund for the payment of debt service obligations in accordance with the school financial administration provisions of this title.

(2) The county treasurer shall pay from the debt service fund all amounts of interest and principal on school district bonds as the interest or principal becomes due when the coupons or bonds are presented and surrendered for payment and shall pay all special improvement district assessments as they become due. If the bonds are held by the state of Montana, then all payments must be remitted to the state treasurer who shall cancel the coupons or bonds and return the coupons or bonds to the county treasurer with the state treasurer's receipt. If the bonds are not held by the state of Montana and the interest or principal is made payable at some designated bank or financial institution, the county treasurer shall remit the amount due for

interest or principal to the bank or financial institution for payment against the surrender of the canceled coupons or bonds.

(3) Whenever any school district bond or installment on school district bonds becomes due and payable, interest ceases on that date unless sufficient funds are available to pay the bond when it is presented for payment or when payment of an installment is demanded. In either case, interest on the bond or installment continues until payment is made.

(4) Any installment on interest and principal on bonds held by the state that is not promptly paid when due draws interest at an annual rate of 6% from the date due until actual payment, irrespective of the rate of interest on the bonds.

History: En. 75-7129 by Sec. 330, Ch. 5, L. 1971; amd. Sec. 3, Ch. 432, L. 1975; R.C.M. 1947, 75-7129; amd. Sec. 14, Ch. 492, L. 2003.

Cross-References

Administration of finances, Title 20, ch. 9, part 2.

20-9-441. Redemption of bonds — investment of debt service fund moneys. (1) Whenever there is a sufficient amount of money in any school district debt service fund available to pay and redeem one or more bonds of such school district held by the state of Montana, the county treasurer shall apply such money in payment of as many of such bonds as can be paid and redeemed. The county treasurer shall give notice not less than 30 days before the next interest due date to the board of investments that on such interest due date such bonds will be paid. Before such interest due date, the county treasurer shall remit to the state treasurer the amount of money that is necessary to pay the bonds that are being redeemed and the interest due on such bonds. When the state treasurer receives such payment, he shall cancel such bonds and any unpaid coupons of such bonds and return the canceled bonds and coupons to the county treasurer.

(2) Whenever there is a sufficient amount of money in any school district debt service fund available to pay and redeem one or more optional bonds of such school district not held by the state of Montana, not yet due but then redeemable or becoming redeemable on the next interest due date, the county treasurer shall apply such available money in payment of as many of such bonds as can be paid and redeemed. The county treasurer shall give notice to the holder of the bonds, if known to him, or to any bank or financial institution at which the bonds are payable, at least 30 days before the next interest due date, that the bonds will be paid and redeemed on such date. If the bonds are payable at some bank or financial institution, the county treasurer shall remit to the bank or financial institution, before such interest due date, an amount sufficient to pay and redeem the bonds. If the bonds are not presented for payment and redemption on such interest due date, the accrual of interest shall cease on such interest due date.

(3) Whenever there is money available in any school district debt service fund sufficient to pay and redeem one or more outstanding bonds not yet due or redeemable and not held by the state of Montana, the trustees of such school district may direct the county treasurer to purchase such bonds of the district if this can be done at not more than par and accrued interest or at such reasonable premium as the trustees may feel justified in paying, but in no case exceeding 6%.

(4) Whenever the trustees cannot purchase outstanding bonds of the school district at a reasonable price, the available debt service fund money shall be invested by the trustees under the provisions of 20-9-213(4). Such investments shall be sold in ample time before the debt service fund money is required for the payment of the bonds of the school district.

History: En. 75-7130 by Sec. 331, Ch. 5, L. 1971; R.C.M. 1947, 75-7130; amd. Sec. 10, Ch. 384, L. 1979.

20-9-442. Entries of payments and notification of school district. The county treasurer shall make the necessary entries of all payments of interest and principal on his bond registration record and shall promptly notify the clerk of the school district when such payments are made. The county treasurer also shall deliver the canceled coupons and bonds to the county clerk at the end of each month. The county clerk shall file such canceled coupons and bonds in his office.

History: En. 75-7131 by Sec. 332, Ch. 5, L. 1971; R.C.M. 1947, 75-7131.

20-9-443. Disposition of remaining debt service fund. (1) Except as provided in subsection (2), when all of the bonds, bond interest, and special improvement district obligations of a school district have been fully paid, all money remaining in the debt service fund for the

school district and all money that may come into the debt service fund from the payment of the delinquent taxes must be transferred by the county treasurer to the building reserve levy fund, the technology acquisition and depreciation fund, or the general fund as designated by the school district if the subsequent use of the funds by the school district is limited to constructing, equipping, or enlarging school buildings or purchasing land needed for school purposes in the district.

(2) Any federal impact aid funding remaining in the debt service fund of a school district that has fully repaid the bonds and bond interest must revert to the district's impact aid fund established pursuant to 20-9-514.

History: En. 75-7132 by Sec. 333, Ch. 5, L. 1971; R.C.M. 1947, 75-7132; amd. Sec. 4, Ch. 480, L. 2001; amd. Sec. 3, Ch. 549, L. 2001; amd. Sec. 19, Ch. 462, L. 2005; amd. Sec. 25, Ch. 44, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 44 in (2) near end after "aid" substituted "fund" for "account". Amendment effective October 1, 2007.

20-9-444. Liability of officers for failure to provide fund for payment of bonds.

When the trustees of a school district are required by law to provide, by a levy of taxes or by certifying the amount of money required or otherwise, a sinking fund or fund required to pay at maturity any bonds issued or created after February 6, 1923, such trustees are jointly and severally liable to the school district which they represent if they fail to perform any duties so required by law, as specified in this section, in an amount equal to the sum which would have been added to such fund had they performed such duty. However, whenever any such board of trustees fails or neglects to perform any such duty, no minority member of the board who moved the board or voted in favor of performance of such duty may be held liable.

History: En. Sec. 1, Ch. 5, L. 1923; re-en. Sec. 463.1, R.C.M. 1935; R.C.M. 1947, 59-534; amd. Sec. 11, Ch. 384, L. 1979.

Cross-References

Penalty for violation of school laws, 20-1-207.

Trustee removal, 20-3-310.

Personal immunity and liability of trustees, 20-3-332.

20-9-445. Liability for misuse of bond payment fund. Any person or persons who shall take, use, appropriate, or permit to be taken, used, or appropriated any portion of any such fund as herein specified for any purpose other than that permitted by law shall be jointly and severally liable to the county, city, school district, irrigation district, or other municipal or public corporation to which said fund shall belong for the portion of such fund so unlawfully taken, used, or appropriated.

History: En. Sec. 2, Ch. 5, L. 1923; re-en. Sec. 463.2, R.C.M. 1935; R.C.M. 1947, 59-535.

Cross-References

Penalty for violation of school laws, 20-1-207.

Trustee removal, 20-3-310.

Personal immunity and liability of trustees, 20-3-332.

20-9-446. Duty of county attorney to prosecute. It shall be the duty of the county attorney in each county to commence and prosecute all actions to enforce any liability created by 20-9-444 or 20-9-445. Such actions shall be tried as civil actions at law.

History: En. Sec. 3, Ch. 5, L. 1923; re-en. Sec. 463.3, R.C.M. 1935; R.C.M. 1947, 59-536.

Cross-References

Conflict of interest, 20-1-205.

20-9-447 through 20-9-450 reserved.

20-9-451. Repealed. Sec. 22, Ch. 219, L. 1997.

History: En. 75-7133 by Sec. 334, Ch. 5, L. 1971; R.C.M. 1947, 75-7133.

20-9-452. Repealed. Sec. 22, Ch. 219, L. 1997.

History: En. 75-7134 by Sec. 335, Ch. 5, L. 1971; amd. Sec. 12, Ch. 83, L. 1971; R.C.M. 1947, 75-7134; amd. Sec. 1, Ch. 42, L. 1985.

20-9-453. Repealed. Sec. 22, Ch. 219, L. 1997.

History: En. 75-7135 by Sec. 336, Ch. 5, L. 1971; R.C.M. 1947, 75-7135.

20-9-454. Repealed. Sec. 22, Ch. 219, L. 1997.

History: En. 75-7136 by Sec. 337, Ch. 5, L. 1971; R.C.M. 1947, 75-7136.

20-9-455. Repealed. Sec. 22, Ch. 219, L. 1997.

History: En. 75-7137 by Sec. 338, Ch. 5, L. 1971; R.C.M. 1947, 75-7137.

20-9-456. Repealed. Sec. 22, Ch. 219, L. 1997.

History: En. 75-7138 by Sec. 339, Ch. 5, L. 1971; R.C.M. 1947, 75-7138.

20-9-457 through 20-9-460 reserved.

20-9-461. Purpose. Section 20-9-464 and this section are intended to improve the marketability of bonds issued by school districts in order that the bonds may be sold upon the most favorable terms.

History: En. Sec. 4, Ch. 139, L. 1939; R.C.M. 1947, 82-413(part); amd. Sec. 9, Ch. 94, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 94 at beginning substituted "Section 20-9-464 and this section" for "Sections 20-9-461 through 20-9-464"; and made minor changes in style. Amendment effective October 1, 2007.

20-9-462. Repealed. Sec. 14, Ch. 94, L. 2007.

History: En. Sec. 1, Ch. 139, L. 1939; R.C.M. 1947, 82-410(part).

20-9-463. Repealed. Sec. 14, Ch. 94, L. 2007.

History: En. Sec. 2, Ch. 139, L. 1939; R.C.M. 1947, 82-411(part).

20-9-464. Statute of limitations — action to test validity. A bond of any issue may not be held invalid because of any defect or failure to comply with a statutory provision relating to the authorization, issuance, or sale of the bonds unless an action to contest the validity of the bonds is brought within 30 days after the date of the adoption of the resolution calling for the sale of bonds of the school district.

History: En. Sec. 3, Ch. 139, L. 1939; R.C.M. 1947, 82-412(part); amd. Sec. 20, Ch. 451, L. 2005; amd. Sec. 10, Ch. 94, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 94 near beginning after "issue" deleted "in which the preliminary proceedings have been submitted to and approved by the attorney general"; and made minor changes in style. Amendment effective October 1, 2007.

Cross-References

Bond Validating Act, Title 17, ch. 5, part 2.

20-9-465. Action to restrain bond issue — time for bringing. (1) No action may be brought for the purpose of restraining the issuance and sale of bonds or other obligations by any school district or for the purpose of restraining the levy and collection of taxes for the payment of such bonds or other obligations after the expiration of 60 days from the date of the election on such bonds or obligations or, if no election was held thereon, after the expiration of 60 days from the date of the resolution authorizing the issuance thereof on account of any defect, irregularity, or informality in giving notice of or in holding the election; nor may any defense based upon any such defect, irregularity, or informality be interposed in any action unless brought within this period.

(2) This section applies but is not limited to any action and defense in which the issue is raised whether a voted debt or liability has carried by the required majority vote of the electors qualified and offering to vote thereon.

History: En. Sec. 1, Ch. 114, L. 1919; re-en. Sec. 9040, R.C.M. 1921; re-en. Sec. 9040, R.C.M. 1935; amd. Sec. 15, Ch. 158, L. 1971; R.C.M. 1947, 93-2612(part); amd. Sec. 12, Ch. 384, L. 1979.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Property tax levies, Title 15, ch. 10.

Bond Validating Act, Title 17, ch. 5, part 2.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

20-9-466. Repealed. Sec. 3, Ch. 14, L. 2007.

History: En. Sec. 1, Ch. 12, Sp. L. January 1992; amd. Sec. 39, Ch. 18, L. 1995; amd. Sec. 115, Ch. 42, L. 1997.

20-9-467. Repealed. Sec. 3, Ch. 14, L. 2007.

History: En. Sec. 2, Ch. 12, Sp. L. January 1992.

20-9-468 through 20-9-470 reserved.

20-9-471. Issuance of obligations — authorization — conditions. (1) The trustees of a school district may, without a vote of the electors of the district, issue and sell to the board of investments obligations for the purpose of financing all or a portion of:

- (a) the costs of vehicles and equipment;
- (b) the costs associated with renovating, rehabilitating, and remodeling facilities, including but not limited to roof repairs, heating, plumbing, and electrical systems;
- (c) any other expenditure that the district is otherwise authorized to make, subject to subsection (4), including the payment of settlements of legal claims and judgments; and
- (d) the costs associated with the issuance and sale of the obligations.

(2) The term of the obligation, including an obligation for a qualified energy project, may not exceed 10 fiscal years. For the purposes of this subsection, a “qualified energy project” means a project designed to reduce energy use in a school facility and from which the resulting energy cost savings are projected to meet or exceed the debt service obligation for financing the project, as determined by the department of environmental quality.

(3) At the time of issuing the obligation, there must exist an amount in the budget for the current fiscal year available and sufficient to make the debt service payment on the obligation coming due in the current year. The budget for each following year in which any portion of the principal of and interest on the obligation is due must provide for payment of that principal and interest.

(4) Except as provided in 20-9-502 and 20-9-503, the proceeds of the obligation may not be used to acquire real property or construct a facility unless:

- (a) the acquisition or construction project does not constitute more than 20% of the square footage of the existing real property improvements made to a facility containing classrooms;
- (b) the 20% square footage limitation may not be exceeded within any 5-year period; and
- (c) the electors of the district approve a proposition authorizing the trustees to apply for funds through the board of investments for the construction project. The proposition must be approved at a special or regular election in accordance with all of the requirements of 20-9-428, except that the proposition is considered to have passed if a majority of the qualified electors voting approve the proposition.

(5) An obligation issued is payable from any legally available fund of the district and constitutes a general obligation of the district.

(6) The obligation may bear interest at a fixed or variable rate and may be sold to the board of investments at par, at a discount, or with a premium and upon any other terms and conditions that the trustees determine to be in the best interests of the district.

(7) The principal amount of the obligation, when added to the outstanding bonded indebtedness of the district, may not exceed the debt limitation established in 20-9-406.

History: En. Sec. 1, Ch. 264, L. 1989; amd. Sec. 1, Ch. 719, L. 1991; amd. Sec. 38, Ch. 767, L. 1991; amd. Sec. 1, Ch. 37, L. 1995; amd. Sec. 1, Ch. 23, L. 1997; amd. Sec. 1, Ch. 499, L. 1997.

20-9-472. Security for impact aid revenue bonds — agreement of state. (1) To secure the payment of principal and interest on impact aid revenue bonds, the trustees of a school district by resolution or indenture of trust may provide that impact aid revenue bonds are secured by a first lien on the federal impact aid basic support payments received and credited to the fund established in 20-9-514 and pledge to the holders of the impact aid revenue bonds all of the money in the impact aid revenue bond debt service fund.

(2) Upon receipt of the federal impact aid basic support payment, the county treasurer shall deposit in the impact aid revenue bond debt service fund the amount that is required to pay the principal of and interest on the impact aid revenue bonds coming due in the next 12-month period and to restore any deficiency in the impact aid revenue bond debt service reserve account. Excess federal impact aid basic support payment revenue must be deposited as provided in 20-9-514. The school district and county treasurer may designate a trustee for holders of the bonds to receive the school district’s impact aid revenue for purposes of making the annual debt service payments on impact aid revenue bonds and may authorize the trustee to establish and maintain the impact aid revenue bond debt service fund and impact aid revenue bond debt service reserve account.

(3) Any pledge made pursuant to this section is valid and binding from the time the pledge is made, and the money pledged and received by the county treasurer on behalf of the school district to be placed in the impact aid revenue bond debt service fund account is immediately subject to the lien of the pledge without any future physical delivery or further act. A lien of any pledge is valid and binding against all parties that have claims of any kind against the school district, regardless of whether the parties have notice of the lien. The bond resolution or indenture of trust that creates the pledge, when adopted by the trustees of any district, is notice of the creation of the pledge, and those instruments are not required to be recorded in any other place to perfect the pledge.

(4) The state pledges to and agrees with the holders of impact aid revenue bonds that the state will not limit, alter, or impair the ability of a school district to qualify for impact aid revenue or in any way impair the rights and remedies of the bondholders until all bonds issued under this section, together with interest on the bonds, interest on any unpaid installments of principal or interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged. The trustees of any district, as agents for the state, may include this pledge and undertaking in resolutions and indentures authorizing and securing the bonds.

History: En. Sec. 15, Ch. 492, L. 2003; amd. Sec. 26, Ch. 44, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 44 in (1) near middle after "credited to the" substituted "fund" for "account". Amendment effective October 1, 2007.

Part 5 Special Purpose Funds

Part Cross-References

Management of school money, Title 7, ch. 6, part 28.

Bus depreciation reserve fund, 20-10-147.

School food services fund, 20-10-204, 20-10-207.

20-9-501. Retirement costs and retirement fund. (1) The trustees of a district or the management board of a cooperative employing personnel who are members of the teachers' retirement system or the public employees' retirement system, who are covered by unemployment insurance, or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems as provided in subsection (2)(a). The district's or the cooperative's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's or the cooperative's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's or the cooperative's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's or the cooperative's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) (a) The district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the retirement fund for the following:

(i) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from state or local funding sources;

(ii) a cooperative employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the cooperative's interlocal cooperative fund if the fund is supported solely from districts' general funds and state special education allowable cost payments, pursuant to 20-9-321, or are paid from the miscellaneous programs fund, provided for in 20-9-507, from money received from the medicaid program, pursuant to 53-6-101;

(iii) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district's school food services fund provided for in 20-10-204; and

(iv) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district impact aid fund, pursuant to 20-9-514.

(b) For an employee whose benefits are not paid from the retirement fund, the district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the funding source that pays the employee's salary.

(3) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the final budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(4) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) countywide school retirement block grants distributed under 20-9-631;

(v) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(vi) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

(b) notwithstanding the provisions of subsection (9), subtracting the money available for reduction of the levy requirement, as determined in subsection (4)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(5) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners on the fourth Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(6) The county commissioners shall fix and set the county levy or district levy in accordance with 20-9-142.

(7) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(8) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151, and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(9) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (5)(a) by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(10) The levy for a community college district may be applied only to property within the district.

(11) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements for county school funds supporting elementary and high school district retirement obligations to the superintendent of public instruction not later than the second Monday in September. The report must be completed on forms supplied by the superintendent of public instruction.

History: En. 75-7204 by Sec. 343, Ch. 5, L. 1971; amd. Sec. 1, Ch. 281, L. 1973; amd. Sec. 1, Ch. 202, L. 1975; amd. Sec. 1, Ch. 121, L. 1977; R.C.M. 1947, 75-7204; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 3, Ch. 481, L. 1979; amd. Sec. 5, Ch. 699, L. 1983; amd. Sec. 16, Ch. 695, L. 1985; amd. Sec. 19, Ch. 611, L. 1987; amd. Sec. 4, Ch. 635, L. 1987; amd. Sec. 23, Ch. 655, L. 1987; amd. Secs. 43, 89, Ch. 11, Sp. L. June 1989; amd. Sec. 39, Ch. 767, L. 1991; amd. Sec. 9, Ch. 133, L. 1993; amd. Sec. 43, Ch. 451, L. 1995; amd. Sec. 6, Ch. 580, L. 1995; amd. Sec. 10, Ch. 211, L. 1997; amd. Sec. 13, Ch. 496, L. 1997; amd. Sec. 1, Ch. 379, L. 1999; amd. Sec. 18, Ch. 515, L. 1999; amd. Sec. 13, Ch. 554, L. 1999; amd. Sec. 121, Ch. 574, L. 2001; amd. Sec. 3, Ch. 276, L. 2003; amd. Sec. 7, Ch. 550, L. 2003; amd. Sec. 28, Ch. 130, L. 2005; amd. Sec. 1, Ch. 405, L. 2005; amd. Sec. 27, Ch. 44, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 44 in (2)(a)(ii) near beginning after "interlocal" substituted "cooperative" for "agreement"; and made minor changes in style. Amendment effective October 1, 2007.

Cross-References

Participation of teachers in Social Security system, Title 19, ch. 1, part 8.

School fiscal year, 20-1-301.

Special funding provisions for special education cooperatives, 20-7-451.

Administration of finances, Title 20, ch. 9, part 2.

20-9-502. Purpose and authorization of building reserve fund by election — levy for school transition costs. (1) The trustees of any district, with the approval of the qualified electors of the district, may establish a building reserve for the purpose of raising money for the future construction, equipping, or enlarging of school buildings, for the purpose of purchasing land needed for school purposes in the district, or for the purpose of funding school transition costs as provided in subsections (5) and (6). In order to submit to the qualified electors of the district a building reserve proposition for the establishment of or addition to a building reserve, the trustees shall pass a resolution that specifies:

(a) the purpose or purposes for which the new or addition to the building reserve will be used;

(b) the duration of time over which the new or addition to the building reserve will be raised in annual, equal installments;

(c) the total amount of money that will be raised during the duration of time specified in subsection (1)(b); and

(d) any other requirements under 15-10-425 and 20-20-201 for the calling of an election.

(2) The total amount of building reserve, less the amount provided for in subsection (5), when added to the outstanding indebtedness of the district may not be more than the limitations provided in 20-9-406. Except as provided in subsections (5)(b) and (6), a building reserve tax authorization may not be for more than 20 years.

(3) The election must be conducted in accordance with the school election laws of this title, and the electors qualified to vote in the election must be qualified under the provisions of 20-20-301. The ballot for a building reserve proposition must be substantially in compliance with 15-10-425.

(4) The building reserve proposition is approved if a majority of those electors voting at the election approve the establishment of or addition to the building reserve. The annual budgeting and taxation authority of the trustees for a building reserve is computed by dividing the total authorized amount by the specified number of years. The authority of the trustees to budget and impose the taxation for the annual amount to be raised for the building reserve lapses when, at a later time, a bond issue is approved by the qualified electors of the district for the same purpose or purposes for which the building reserve fund of the district was established. Whenever a subsequent bond issue is made for the same purpose or purposes of a building reserve, the money

in the building reserve must be used for the purpose or purposes before any money realized by the bond issue is used.

(5) (a) The trustees may submit a proposition to the qualified electors of the district for a levy to provide funding for transition costs incurred when the trustees:

- (i) open a new school under the provisions of Title 20, chapter 6;
- (ii) close a school;
- (iii) replace a school building; or
- (iv) consolidate with or annex another district under the provisions of Title 20, chapter 6.

(b) Except as provided in subsections (5)(c) and (6), the total amount the trustees may submit to the electorate for transition costs may not exceed the number of years specified in the proposition times the greater of 5% of the district's maximum general fund budget for the current year or \$250 per ANB for the current year. Except as provided in subsection (6), the duration of the levy for transition costs may not exceed 6 years.

(c) If the levy for transition costs is for consolidation or annexation:

(i) the limitation on the amount levied is calculated using the ANB and the maximum general fund budget for the districts that are being combined; and

(ii) the proposition must be submitted to the qualified electors in the combined district.

(d) The levy for transition costs may not be considered as outstanding indebtedness for the purpose of calculating the limitation in 20-9-406.

(6) The trustees of a K-12 district shall impose a levy for transition costs to fund the payment required by 20-6-326(6)(b) when a proposition to create the K-12 district and to assess the transition levy has been approved pursuant to 20-6-326(2). The levy is limited to the amount required by 20-6-326(6)(b) for a period not to exceed 3 years.

History: En. 75-7205 by Sec. 344, Ch. 5, L. 1971; amd. Sec. 13, Ch. 83, L. 1971; amd. Sec. 1, Ch. 29, L. 1975; R.C.M. 1947, 75-7205; amd. Sec. 62, Ch. 614, L. 1981; amd. Sec. 8, Ch. 555, L. 1991; amd. Sec. 18, Ch. 237, L. 2001; amd. Sec. 28, Ch. 495, L. 2001; amd. Sec. 5, Ch. 194, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 194 in (1) at end of first sentence inserted reference to subsection (6); in (2) in second sentence in exception clause inserted reference to subsection (6); in (5)(b) in first and second sentences in exception clause inserted reference to subsection (6); inserted (6) concerning levy for transition costs; and made minor changes in style. Amendment effective April 12, 2007.

Effective Date — Applicability: Section 7, Ch. 194, L. 2007, provided: "[This act] is effective on passage and approval and applies to the creation of new districts on or after [the effective date of this act]." Approved April 12, 2007.

Cross-References

Mail ballot elections prohibited, 13-19-104.

School property, Title 20, ch. 6, part 6.

20-9-503. Budgeting, tax levy, and use of building reserve fund. (1) Whenever an annual building reserve authorization to budget is available to a district, the trustees shall include the authorized amount in the building reserve fund of the final budget. The county superintendent shall report the amount as the building reserve fund levy requirement to the county commissioners on the fourth Monday of August, and a levy on the district must be made by the county commissioners in accordance with 20-9-142.

(2) The trustees of any district maintaining a building reserve fund may:

(a) pledge the revenue for loans from the building reserve fund levy for up to 5 years. However, loan proceeds may be used only for projects authorized by 20-9-502.

(b) expend money from the fund for the purpose or purposes for which it was authorized without the specific expenditures being included in the final budget when, in their discretion, there is a sufficient amount of money to begin the authorized projects. The expenditures may not invalidate the district's authority to continue the annual imposition of the building reserve taxation authorized by the electors of the district.

(3) Whenever there is money credited to the building reserve fund for which there is no immediate need, the trustees may invest the money in accordance with 20-9-213(4). The interest earned from the investment must be credited to the building reserve fund or the debt service fund, at the discretion of the trustees, and expended for any purpose authorized by law for the fund.

History: En. 75-7206 by Sec. 345, Ch. 5, L. 1971; R.C.M. 1947, 75-7206; amd. Sec. 10, Ch. 133, L. 1993; amd. Sec. 2, Ch. 23, L. 1997; amd. Sec. 11, Ch. 211, L. 1997.

20-9-504. Extracurricular fund for pupil functions. (1) The government of the pupils of the school within a district or the administration of a school on behalf of the pupils may establish an extracurricular fund for the purposes of the receipts and expenditures of money collected for pupil extracurricular functions with the approval of the trustees of the district. All extracurricular money of a pupil organization of the school must be deposited and expended by check from a bank account maintained for the extracurricular fund.

(2) An accounting system for the extracurricular fund recommended by the superintendent of public instruction must be implemented by the trustees. The accounting system must provide for:

- (a) the internal control of the cash receipts and expenditures of the money; and
- (b) a general account that can be reconciled with the bank account for the extracurricular fund and reconciled with the detailed accounts within the extracurricular fund maintained for each student function.

History: En. 75-6323 by Sec. 136, Ch. 5, L. 1971; amd. Sec. 1, Ch. 349, L. 1971; amd. Sec. 1, Ch. 218, L. 1973; amd. Sec. 17, Ch. 380, L. 1975; R.C.M. 1947, 75-6323; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 40, Ch. 767, L. 1991.

20-9-505. Purpose and establishment of nonoperating fund. (1) The trustees of a district that will not operate a school during the ensuing school fiscal year shall establish a nonoperating fund on the first day of the school fiscal year. In establishing the nonoperating fund, the trustees shall cause the transfer of the end-of-the-year fund balance of each fund maintained by the district during the immediately preceding school fiscal year to the nonoperating fund. However, fund balances of the debt service fund and the miscellaneous programs fund, if any, must be maintained in their individual funds.

(2) The trustees of a district establishing a nonoperating fund for the first year of nonoperation may earmark a portion of the nonoperating fund balance as a nonoperating fund operating reserve when they anticipate the reopening of a school in the following school fiscal year. The operating reserve may not be more than the general fund operating reserve designated for the immediately preceding school fiscal year. If a school is not operated in the following school fiscal year, the authority of the trustees to earmark a nonoperating fund operating reserve terminates and the money earmarked as an operating reserve must be used to reduce the levy requirement of the nonoperating fund. If the trustees acquire approval to reopen a school in the following school fiscal year under the provisions of 20-6-502 or 20-6-503 and operate the school, the nonoperating fund operating reserve must be restored as the general fund operating reserve.

(3) The purpose of the nonoperating fund is to centralize the financing and budgeting for the limited functions of a district not operating a school. The functions include:

- (a) elementary tuition obligations to other districts;
- (b) transportation of the resident pupils;
- (c) maintenance of district-owned property; and
- (d) any other nonoperating school function of the district considered necessary by the trustees or required by law.

(4) Any expenditure of nonoperating fund money must be made in accordance with the financial administration provisions of this title for a budgeted fund.

History: En. 75-7209 by Sec. 348, Ch. 5, L. 1971; R.C.M. 1947, 75-7209; amd. Sec. 41, Ch. 767, L. 1991.

Cross-References

School fiscal year, 20-1-301.

Elementary district abandonment, 20-6-209.

High school district abandonment, 20-6-307.

20-9-506. Budgeting and net levy requirement for nonoperating fund. (1) The trustees of any district which does not operate a school or will not operate a school during the ensuing school fiscal year shall adopt a nonoperating school district budget in accordance with the school budgeting provisions of this title. Such nonoperating budget shall contain the nonoperating fund and, when appropriate, a debt service fund. The nonoperating budget form shall be promulgated and distributed by the superintendent of public instruction under the provisions of 20-9-103.

(2) After the adoption of a final budget for the nonoperating fund, the county superintendent shall compute the net levy requirement for such fund by subtracting from the amount authorized by such budget the sum of:

(a) the end-of-the-year cash balance of the nonoperating fund or, if it is the first year of nonoperation, the cash balance determined under the transfer provisions of 20-9-505;

(b) the estimated state and county transportation reimbursements; and

(c) any other moneys that may become available during the ensuing school fiscal year.

(3) The county superintendent shall report the net nonoperating fund levy requirement and any net debt service fund levy requirement determined under the provisions of 20-9-439 to the county commissioners on the fourth Monday of August, and such levies shall be made on the district by the county commissioners in accordance with 20-9-142.

History: En. 75-7210 by Sec. 349, Ch. 5, L. 1971; R.C.M. 1947, 75-7210; amd. Sec. 11, Ch. 133, L. 1993.

Cross-References

Property tax levies, Title 15, ch. 10.

State transportation reimbursement, 20-10-145.

County transportation reimbursement, 20-10-146.

20-9-507. Miscellaneous programs fund. (1) The trustees of a district receiving money from local, state, federal, or other sources provided in 20-5-324, other than money under the provisions of impact aid, as provided in 20 U.S.C. 7701, et seq., or federal money designated for deposit in a specific fund of the district, shall establish a miscellaneous programs fund for the deposit of the money. The money may be a reimbursement of miscellaneous program fund expenditures already realized by the district, indirect cost recoveries, the transfer of a fund balance from a tuition fund closed under 20-9-201, or a grant of money for the financing of expenditures to be realized by the district for a special, approved program to be operated by the district. When the money is a reimbursement, the transfer of a tuition fund balance, or a local government severance tax payment, the money may be expended at the discretion of the trustees for school purposes. When the money is a grant, the money must be expended according to the conditions of the program approval by the superintendent of public instruction or any other approval agent. Within the miscellaneous programs fund, the trustees shall maintain a separate accounting for each local, state, or federal grant project, funds transferred from a closed tuition fund, and the indirect cost recoveries.

(2) The financial administration of the miscellaneous programs fund must be in accordance with the financial administration provisions of this title for a nonbudgeted fund.

History: En. 75-7212 by Sec. 351, Ch. 5, L. 1971; R.C.M. 1947, 75-7212; amd. Sec. 5, Ch. 310, L. 1979; amd. Sec. 42, Ch. 767, L. 1991; amd. Sec. 8, Ch. 466, L. 1993; amd. Sec. 15, Ch. 563, L. 1993; amd. Sec. 37, Ch. 633, L. 1993; amd. Sec. 44, Ch. 451, L. 1995; amd. Sec. 26, Ch. 22, L. 1997; amd. Sec. 14, Ch. 554, L. 1999; amd. Sec. 2, Ch. 356, L. 2001.

Cross-References

Administration of finances, Title 20, ch. 9, part 2.

20-9-508. Building fund. (1) The trustees of a district shall establish or credit the building fund whenever the district:

(a) issues and sells bonds under the school district bonding provisions of this title for purposes other than refunding bonds of the district;

(b) receives federal money for the express purpose of building, enlarging, or remodeling a school building or other building of the district;

(c) sells property of the district in accordance with the law authorizing the sale;

(d) earns interest from the investment of building fund money under the provisions of 20-9-213(4), except that interest earned from the investment of bond money under the provisions of 20-9-435 must be credited to a fund in accordance with that section; or

(e) receives any other money, including payments made by a developer under the provisions of 20-9-615, for the express purpose of building, enlarging, or remodeling a school building or other building of the district.

(2) The financial administration of the building fund must be in accordance with the financial administration provisions of this title for a nonbudgeted fund and must provide for a separate accounting of the money realized by each bond issue or by each construction project financed by a federal grant of money. Any other money deposited to the credit of this fund must

be expended for building, enlargement, remodeling, or repairing of buildings of the district at the discretion of the trustees.

(3) Money credited to the building fund under the provisions of subsection (1)(a) must be expended for the express purpose or purposes authorized by the bond proposition approved at the election authorizing the issuance of the bonds. Any money realized by the sale of bonds and remaining to the credit of the building fund after the full accomplishment of the purpose for which the bonds were sold must be transferred to the debt service fund to be used for the redemption of the bonds.

(4) Money credited to the building fund under the provisions of subsection (1)(b) must be expended for the express purpose or purposes authorized by the federal government in granting the money.

History: En. 75-7213 by Sec. 352, Ch. 5, L. 1971; R.C.M. 1947, 75-7213; amd. Sec. 3, Ch. 506, L. 1995; amd. Sec. 12, Ch. 343, L. 1999.

Cross-References

Trustees' authority to acquire or dispose of sites and buildings, 20-6-603.

Sale of property when resolution passed after hearing, 20-6-604.

Administration of finances, Title 20, ch. 9, part 2.

Lease or sale of district property, 20-15-107.

20-9-509. Lease or rental agreement fund. (1) The trustees of any district that provides pupil or teacher housing in district-owned buildings under a lease or rental agreement with pupils or teachers or receives money under the provision of 20-6-607 may establish a lease or rental agreement fund. All money received from the lease or rental agreements may be deposited with the county treasurer to the credit of the lease or rental agreement fund, general fund, the debt service fund, or any other appropriate fund. Whenever the end-of-the-year cash balance of a lease or rental agreement fund is more than \$10,000 for an elementary or high school district or \$20,000 for a K-12 district, the cash balance in excess of this limit must be transferred to the general fund of the district.

(2) Any expenditure of money from a lease or rental agreement fund must be made for the maintenance and operation of the district-owned buildings to which the lease or rental agreements apply or for the acquisition of additional housing or dormitory facilities. The financial administration of the lease or rental agreement fund must be in accordance with the financial administration provisions of this title for a nonbudgeted fund.

History: En. 75-7214 by Sec. 353, Ch. 5, L. 1971; amd. Sec. 1, Ch. 88, L. 1973; amd. Sec. 4, Ch. 424, L. 1977; R.C.M. 1947, 75-7214; amd. Sec. 1, Ch. 58, L. 1983; amd. Sec. 1, Ch. 135, L. 1987; amd. Sec. 27, Ch. 22, L. 1997.

Cross-References

Leasing district property and disposition of any rentals, 20-6-607.

20-9-510. Traffic education fund. The trustees of any district offering a state reimbursed traffic education program shall establish a traffic education fund under the provisions of 20-7-507. Such fund shall be a nonbudgeted fund and shall be financially administered under the provisions of this title for a nonbudgeted fund.

History: En. 75-7215 by Sec. 354, Ch. 5, L. 1971; R.C.M. 1947, 75-7215.

20-9-511. Interlocal cooperative fund. The trustees of any district serving as a prime agency under an interlocal cooperative agreement shall establish an interlocal cooperative fund under the provisions of 20-9-703 for the financial administration of the interlocal cooperative agreement. Such fund shall be a nonbudgeted fund and shall be financially administered under the provisions of this title for a nonbudgeted fund.

History: En. 75-7216 by Sec. 355, Ch. 5, L. 1971; R.C.M. 1947, 75-7216.

Cross-References

Interlocal Cooperation Act, Title 7, ch. 11, part 1.

20-9-512. Compensated absence liability fund. (1) The trustees of a school district may establish a compensated absence liability fund for the purpose of paying:

(a) any accumulated amount of sick leave that a nonteaching or administrative school district employee is entitled to upon termination of employment with the district in accordance with the provisions of 2-18-618; and

(b) any accumulated amount of vacation leave that a nonteaching or administrative school district employee is entitled to upon termination of employment with the district.

(2) The compensated absence liability fund may be used only for the stated purpose of this section.

(3) The trustees may transfer money from the general fund, within the adopted budget, to establish and maintain the compensated absence liability fund.

(4) The maximum amount in a reserve fund established under the provisions of subsections (1) and (3) may not exceed 30% of:

(a) the total school district liability for accumulated sick leave of nonteaching and administrative school district employees on June 30 of the current school fiscal year; and

(b) the total school district liability for accumulated vacation leave of nonteaching and administrative school district employees on June 30 of the current school fiscal year.

(5) For the purposes of this section, “administrative school district employee” means a school district employee who is employed in an administrative position and who accrues vacation leave as part of the employee’s contract with the school district.

History: En. Sec. 1, Ch. 138, L. 1981; amd. Sec. 10, Ch. 568, L. 1991; amd. Sec. 1, Ch. 754, L. 1991; amd. Sec. 1, Ch. 129, L. 1995.

Cross-References

School fiscal year, 20-1-301.

20-9-513. Repealed. Sec. 94, Ch. 11, Sp. L. June 1989.

History: En. Sec. 1, Ch. 384, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 24, Ch. 658, L. 1987.

20-9-514. Impact aid fund. (1) The trustees of a district that receives federal funds under the provisions of impact aid, as provided in 20 U.S.C. 7701, et seq., shall establish an impact aid fund. Money received under the provisions of 20 U.S.C. 7701, et seq., must be deposited with the county treasurer to the credit of the impact aid fund.

(2) The expenditure of money from the impact aid fund must be made pursuant to 20 U.S.C. 7701, et seq. The impact aid fund must be administered pursuant to the financial administration provisions of this title for nonbudgeted funds.

History: En. Sec. 41, Ch. 633, L. 1993; amd. Sec. 28, Ch. 22, L. 1997.

Cross-References

State educational goals to preserve cultural integrity of American Indians, Art. X, sec. 1, Mont. Const.

20-9-515. Litigation reserve fund. (1) The trustees of a school district may establish a litigation reserve fund only when litigation that is pending against the district could result in an award against the district.

(2) At the end of each school fiscal year, the trustees of a district may transfer money from the general fund, within the adopted budget, to establish the fund.

(3) Upon conclusion of litigation, the balance of the money in the fund reverts to the general fund and must be used to reduce the district’s general fund BASE budget levy requirement computed pursuant to 20-9-141.

History: En. Sec. 1, Ch. 493, L. 1995.

20-9-516. School facility improvement account. There is a school facility improvement account in the state special revenue fund provided for in 17-2-102. The purpose of the account is to provide money to schools to implement the recommendations of the school facility condition and needs assessment and energy audit conducted pursuant to section 1, Chapter 1, Special Laws of December 2005, for:

(1) major deferred maintenance;

(2) improving energy efficiency in school facilities; or

(3) critical infrastructure in school districts.

History: En. Sec. 8, Ch. 1, Sp. L. May 2007.

Compiler’s Comments

Effective Date: Section 31, Ch. 1, Sp. L. May 2007, provided: “[This act] is effective July 1, 2007.”

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: “[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007.”

20-9-517 through 20-9-530 reserved.

20-9-531. Repealed. Sec. 94, Ch. 11, Sp. L. June 1989.

History: En. Sec. 1, Ch. 635, L. 1987.

20-9-532. Repealed. Sec. 94, Ch. 11, Sp. L. June 1989.

History: En. Sec. 2, Ch. 635, L. 1987; amd. Sec. 10, Ch. 337, L. 1989.

20-9-533. Technology acquisition and depreciation fund — limitations. (1) The trustees of a district may establish a technology acquisition and depreciation fund for school district expenditures incurred and depreciation accrued for:

(a) the purchase, rental, repair, maintenance, and depreciation of technological equipment, including computers and computer network access; and

(b) associated technical training for school district personnel.

(2) Any expenditures from the technology acquisition and depreciation fund must be made in accordance with the financial administration requirements for a budgeted fund pursuant to this title. The trustees of a district shall fund the technology acquisition and depreciation fund with:

(a) the state money received under 20-9-534; and

(b) other local, state, private, and federal funds received for the purpose of funding technology or technology-associated training.

(3) In depreciating the technological equipment of a school district, the trustees may include in the district's budget, contingent upon voter approval of a levy under subsection (6) and pursuant to the school budgeting requirements of this title, an amount each fiscal year that does not exceed 20% of the original cost of any technological equipment, including computers and computer network access, that is owned by the district. The amount budgeted may not, over time, exceed 150% of the original cost of the equipment.

(4) The annual revenue requirement for each district's technology acquisition and depreciation fund determined within the limitations of this section must be reported by the county superintendent of schools to the board of county commissioners on the fourth Monday of August as the technology acquisition and depreciation fund levy requirement for that district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(5) Any expenditure of technology acquisition and depreciation fund money must be within the limitations of the district's final technology acquisition and depreciation fund budget and the school financial administration provisions of this title.

(6) In addition to the funds received pursuant to subsection (2), the trustees of a school district may submit a proposition to the qualified electors of the district to approve an additional levy to fund the depreciation of technological equipment authorized under this section. The election must be called and conducted in the manner prescribed by this title for school elections and in the manner prescribed by 15-10-425.

(7) The technology proposition is approved if a majority of those electors voting at the election approve the levy. Notwithstanding any other provision of law, the levy under subsection (6) is subject to 15-10-420.

(8) The trustees of a district may not use revenue in the technology acquisition and depreciation fund to finance contributions to the teachers' retirement system, the public employees' retirement system, or the federal social security system or for unemployment compensation insurance.

History: En. Sec. 5, Ch. 517, L. 1995; amd. Sec. 29, Ch. 22, L. 1997; amd. Secs. 2, 3, Ch. 474, L. 2001.

20-9-534. School technology purchases. By September 1, the superintendent of public instruction shall allocate the annual amount for grants for school technology purchases to each district based on the ratio that each district's BASE budget bears to the statewide BASE budget amount for all school districts multiplied by the amount of money provided in 20-9-343 for the purposes of 20-9-533 in the prior fiscal year. The grants for school technology purchases are statutorily appropriated, as provided in 17-7-502.

History: En. Sec. 6, Ch. 517, L. 1995; amd. Sec. 30, Ch. 22, L. 1997; amd. Sec. 6, Ch. 554, L. 2001; amd. Sec. 2, Ch. 3, Sp. L. August 2002.

20-9-535 through 20-9-540 reserved.

20-9-541. Definitions. As used in 20-9-542 and this section, the following definitions apply:

(1) "Average student amount" means the amount calculated by:

(a) multiplying the money available in the school flexibility account, provided for in 20-9-542, by 40%; and

(b) dividing the amount calculated in subsection (1)(a) by the total statewide ANB in the previous fiscal year when averaged with the total statewide ANB for the previous 4 fiscal years.

(2) "Current student amount" means the amount calculated by:

(a) multiplying the money available in the school flexibility account, provided for in 20-9-542, by 20%; and

(b) dividing the amount calculated in subsection (2)(a) by the total statewide ANB in the previous fiscal year.

(3) "District K-12 public school funding amount" means the K-12 public schools amount multiplied by the number of K-12 public schools in the school district in the fiscal year in which the funding is distributed.

(4) "District large K-12 public school funding amount" means the large K-12 public schools amount multiplied by the number of K-12 public schools with an enrollment of at least 250 students in the school district in the fiscal year in which the funding is distributed.

(5) "District student funding amount" means the current student amount multiplied by a district's ANB for the previous fiscal year plus the average student amount multiplied by a district's ANB for the previous fiscal year when averaged with the district's ANB for the 4 previous fiscal years.

(6) "K-12 public schools amount" means the amount calculated by:

(a) multiplying the money available in the school flexibility account, provided for in 20-9-542, by 15%; and

(b) dividing the amount calculated in subsection (6)(a) by the number of K-12 public schools that anticipate having students in the fiscal year in which the funding is distributed.

(7) "Large K-12 public schools amount" means the amount calculated by:

(a) multiplying the money available in the school flexibility account, provided for in 20-9-542, by 25%; and

(b) dividing the amount calculated in subsection (7)(a) by the number of K-12 public schools with an enrollment of at least 250 students that anticipate having students in the fiscal year in which the funding is distributed.

History: En. Sec. 1, Ch. 237, L. 2001.

20-9-542. School flexibility account — distribution of funds. (1) There is a school flexibility account in the state special revenue fund. The superintendent of public instruction shall allocate the money in the account, including any interest earned on money allocated to the account, to each school district. Each school district's total allocation is the sum of the district K-12 public school funding amount, the district large K-12 public school funding amount, and the district student funding amount.

(2) In addition to funds allocated or appropriated to the school flexibility account, all money saved by the state if the actual statewide ANB in a given fiscal year is less than the statewide ANB projected by the legislature during the preceding legislative session must be deposited in the school flexibility account.

(3) A portion of the money in the school flexibility account may be expended by a district to alleviate certified staff shortages in the district or for retirement incentives only if a portion of the account is specified for that purpose in a general appropriation act.

History: En. Sec. 2, Ch. 237, L. 2001; amd. Sec. 8, Ch. 550, L. 2003.

20-9-543. School flexibility fund — uses. (1) (a) The trustees of a district shall establish a school flexibility fund and may use the fund, in their discretion, for school district expenditures incurred for:

(i) technological equipment enhancements and expansions considered by the trustees to support enhanced educational programs in the classroom;

(ii) facility expansion and remodeling considered by the trustees to support the delivery of educational programs or the removal and replacement of obsolete facilities;

(iii) supplies and materials considered by the trustees to support the delivery of enhanced educational programs;

(iv) student assessment and evaluation;

(v) the development of curriculum materials;

(vi) training for classroom staff considered by the trustees to support the delivery of enhanced educational programs;

(vii) purchase, lease, or rental of real property that must be used to provide free or reduced price housing for classroom teachers;

(viii) salaries, benefits, bonuses, and other incentives for the recruitment and retention of classroom teachers and other certified staff, subject to collective bargaining when applicable; or

(ix) increases in energy costs caused by an increase in energy rates from the rates paid by the district in fiscal year 2001 or from increased use of energy as a result of the expansion of facilities, equipment, or other resources of the district.

(b) If the district's ANB calculated for the current fiscal year is less than the ANB for the current fiscal year when averaged with the 4 previous fiscal years, the district may use money from the school flexibility fund to phase in over a 5-year period the spending reductions necessary because of the reduction in ANB.

(2) The trustees of a district shall fund the school flexibility fund with the money allocated under 20-9-542 and with the money raised by the levy under 20-9-544.

(3) The financial administration of the school flexibility fund must be in accordance with the financial administration provisions of this title for a budgeted fund.

History: En. Sec. 3, Ch. 237, L. 2001.

20-9-544. District school flexibility fund levy. (1) In addition to the money allocated in 20-9-542 for a district's school flexibility fund, the trustees of a school district may submit a proposition to the qualified electors of the district to approve a levy in an amount not to exceed 25% of the district's allocation in 20-9-542 to fund the school flexibility fund authorized under 20-9-543. An election called pursuant to this section must be called and conducted in the manner prescribed by this title for school elections. The ballot for a proposition must provide "FOR" and "AGAINST" provisions, stating whether the district is authorized to impose a levy of (state the dollars) dollars and (state the approximate number of mills) mills to fund the school flexibility fund in the school district. The school flexibility fund proposition is approved if a majority of those electors voting at the election approve the levy.

(2) Money collected from the levy must be deposited in the district's school flexibility fund and spent in accordance with 20-9-543.

History: En. Sec. 4, Ch. 237, L. 2001.

Part 6 Public School Fund and Grants to Schools

20-9-601. Public school fund. The public school fund must be maintained by the state treasurer as a fund in the permanent fund type, and the principal amount of the fund is irreducible and permanent. The following money must be credited to the fund as an addition to the irreducible and permanent principal amount:

- (1) appropriations and donations by the state;
- (2) donations and bequests by individuals to the state or schools;
- (3) the proceeds of land and other property that revert to the state by escheat and forfeiture;
- (4) the proceeds of all property granted to the state, when the purpose of the grant is not specified or is uncertain;

(5) funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law;

(6) except as provided in 77-1-109, the proceeds of the sale of stone, materials, or other property from school lands other than those granted for specific purposes and all money other than rental recovered from persons trespassing on the lands;

(7) the principal of all money arising from the sale of lands and other property that has been and may be granted to the state for the support of common schools;

(8) except as provided in 77-1-109, the amount earmarked for deposit in this fund under the provisions of 20-9-341; and

(9) other money as may be provided by the legislature.

History: En. 75-7301 by Sec. 356, Ch. 5, L. 1971; R.C.M. 1947, 75-7301; amd. Sec. 16, Ch. 281, L. 1983; amd. Sec. 4, Ch. 14, Sp. L. January 1992; amd. Sec. 6, Ch. 122, L. 1999; amd. Sec. 13, Ch. 34, L. 2001.

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.
Public school fund inviolate, Art. X, sec. 3, Mont. Const.
Board of Land Commissioners, Art. X, sec. 4, Mont. Const.
Public school fund revenue, Art. X, sec. 5, Mont. Const.
The Enabling Act, sec. 11 (see anno. vol. 1).
Escheated estates, Title 72, ch. 14.

20-9-602. Title to farm mortgage lands vested in state and transfers validated. (1) The transfer of farm mortgage lands, made by Chapter 250, Laws of 1953, shall be deemed to have vested title in such lands in the state of Montana in trust for the state public school fund.

(2) All contracts, certificates of purchase, deeds, and conveyances executed by the state of Montana in the administration of such lands since March 11, 1953, shall be deemed sufficient in law to dispose of the right, title, and interest therein described by the state of Montana.

History: En. 75-7302 by Sec. 357, Ch. 5, L. 1971; R.C.M. 1947, 75-7302.

20-9-603. Acceptance and expenditure of federal moneys for state. (1) The governor and the superintendent of public instruction are authorized on behalf of the state of Montana to request and accept such moneys as are now or will be made available under any act of congress of the United States or otherwise for purposes of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. Such moneys shall be deposited by the governor and superintendent of public instruction in the state treasury and are appropriated and made available to the superintendent of public instruction. All such moneys shall be expended for the purpose of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government.

(2) The governor and superintendent of public instruction are further authorized on behalf of the state of Montana to accept moneys provided from federal sources for the express purpose of distribution to nonpublic education. Such moneys shall be deposited by the governor and superintendent of public instruction in the state treasury and are appropriated and made available to the superintendent of public instruction. All such moneys shall be distributed in the manner provided by the laws of the state of Montana and as authorized or expressed by grants from the federal government.

(3) All expenditures of moneys from federal sources under this section shall be made under the supervision and in the discretion of the superintendent of public instruction. Any balance in the account in which such moneys are maintained shall not lapse at any time but shall be continuously available to the superintendent of public instruction for expenditures consistent with this title and acts of the federal government.

History: En. 75-7303 by Sec. 358, Ch. 5, L. 1971; amd. Sec. 1, Ch. 34, L. 1973; (amd. Sec. 7, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 7, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7303.

Cross-References

Aid prohibited to sectarian schools, Art. X, sec. 6, Mont. Const.
Power to accept gifts, 20-6-601.
Trustees' authority to acquire or dispose of sites and buildings — when election required, 20-6-603.

20-9-604. Gifts, legacies, devises, and administration of endowment fund. (1) The trustees of a district may accept gifts, legacies, and devises, subject to the conditions imposed by the deed of the donor or the will of the testator or without any conditions imposed. Unless otherwise specified by the donor, devisor, or testator, when a district receives a gift, legacy, or devise, the trustees shall deposit the gift, legacy, devise, or the proceeds in an endowment fund. The trustees shall administer the endowment fund so as to preserve the principal from loss, and only the income from the fund may be appropriated for any purpose.

(2) Unless the conditions of the endowment instrument require an immediate disbursement of the money, the money deposited in the endowment fund must be invested by the trustees according to the provisions of the Uniform Management of Institutional Funds Act, Title 72, chapter 30.

(3) All interest collected on the deposits or investments must be credited to the endowment fund. No portion of the endowment fund may be loaned to the district, nor may any money of the fund be invested in warrants of the district.

(4) Whenever a district has been abandoned, the endowment fund of the abandoned district must be transferred and placed in the endowment fund in the district to which the territory is attached.

(5) As the custodian of the endowment fund, the county treasurer is liable on the treasurer's official bond for the endowment fund of any district of the county. No later than July 1 each school fiscal year, the county treasurer shall report to the trustees of each district on the condition of its endowment fund, including the status of the investments that have been made with the money of the fund. The county treasurer shall also include the endowment fund in the treasurer's reports to the board of county commissioners.

(6) The trustees of any district having an endowment fund shall provide suitable memorials for all persons or associations of persons making gifts to the district that become a part of the endowment fund.

History: En. 75-7309 by Sec. 364, Ch. 5, L. 1971; amd. Sec. 1, Ch. 342, L. 1971; amd. Sec. 24, Ch. 266, L. 1977; R.C.M. 1947, 75-7309; amd. Sec. 1, Ch. 76, L. 2001.

Cross-References

General provisions related to official bonds, Title 2, ch. 9, part 5.

Power to accept gifts, 20-6-601.

20-9-605 through 20-9-614 reserved.

20-9-615. Voluntary rural residential impact payments. (1) The trustees of a rural school district may negotiate with a real estate developer or subdivision developer in the school district to voluntarily contribute an impact payment to the district's building fund. The maximum amount of the payment that the trustees may accept must be based upon the number of pupils reasonably expected to move into the district because of the real estate development or subdivision development. Negotiations and any resulting contributions must be voluntary.

(2) For the purposes of this section, "rural school district" means a school district in which a majority of the pupils in the district reside outside the limits of any incorporated city or town.

History: En. Sec. 2, Ch. 506, L. 1995.

20-9-616 through 20-9-619 reserved.

20-9-620. Definition. (1) As used in 20-9-621, 20-9-622, and this section, "distributable revenue" means, except for that portion of revenue described in 20-9-343(4)(a)(ii) and available on or after July 1, 2003, 77-1-607, and 77-1-613, 95% of all revenue from the management of school trust lands and the permanent fund, including timber sale proceeds, lease fees, interest, dividends, and net realized capital gains.

(2) The term does not include mineral royalties or land sale proceeds that are deposited directly in the permanent fund or net unrealized capital gains that remain in the permanent fund until realized.

History: En. Sec. 1, Ch. 418, L. 2001; amd. Sec. 9(1), Ch. 554, L. 2001; amd. Sec. 3, Ch. 3, Sp. L. August 2002.

20-9-621. Permanent fund. (1) The public school fund provided for in Article X, section 2, of the Montana constitution consists of the permanent fund, which consists of the permanent corpus fund.

(2) The permanent fund must be invested for the purpose of generating future income for distribution to public elementary and secondary school districts as provided in Article X, section 5, of the Montana constitution.

History: En. Sec. 2, Ch. 418, L. 2001.

20-9-622. Guarantee account. (1) There is a guarantee account in the state special revenue fund. The guarantee account is intended to:

(a) stabilize the long-term growth of the permanent fund; and

(b) maintain a constant and increasing distributable revenue stream. All realized capital gains and all distributable revenue must be deposited in the guarantee account. Except as provided in subsections (2) and (3), the guarantee account is statutorily appropriated, as

provided in 17-7-502, for distribution to school districts through school equalization aid as provided in 20-9-343.

(2) As long as a portion of the coal severance tax loan authorized in section 8, Chapter 418, Laws of 2001, is outstanding, the department of natural resources and conservation shall monthly transfer from the guarantee account to the general fund an amount that represents the amount of interest income that would be earned from the investment of the amount of the loan that is currently outstanding. When the loan is fully paid, all mineral royalties deposited in the guarantee account must be transferred to the school facility improvement account pursuant to 17-6-340.

(3) The revenue distributed through 20-9-534 must be used for the purposes of 20-9-533.

History: En. Sec. 3, Ch. 418, L. 2001; amd. Sec. 9(2), Ch. 554, L. 2001; amd. Sec. 4, Ch. 10, Sp. L. August 2002; amd. Sec. 1, Ch. 291, L. 2003; amd. Sec. 20, Ch. 1, Sp. L. May 2007.

Compiler's Comments

2007 Special Session Amendment: Chapter 1 in (2) inserted second sentence concerning transfer of mineral royalties to school facility improvement account. Amendment effective July 1, 2007.

Applicability: Section 32, Ch. 1, Sp. L. May 2007, provided: "[This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007."

20-9-623 through 20-9-629 reserved.

20-9-630. School district block grants. (1) (a) The office of public instruction shall provide a block grant to each school district based on the revenue received by each district in fiscal year 2001 from vehicle taxes and fees, corporate license taxes paid by financial institutions, aeronautics fees, state land payments in lieu of taxes, and property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999.

(b) Block grants must be calculated using the electronic reporting system that is used by the office of public instruction and school districts. The electronic reporting system must be used to allocate the block grant amount into each district's budget as an anticipated revenue source by fund.

(c) With the exception of vehicle taxes and fees, the office of public instruction shall use the amount actually received from the sources listed in subsection (1)(a) in fiscal year 2001 in its calculation of the block grant for fiscal year 2002 budgeting purposes. For vehicle taxes and fees, the office of public instruction shall use 93.4% of the amount actually received in fiscal year 2001 in calculating the block grant for fiscal year 2002.

(2) If the fiscal year 2003 appropriation provided in section 248(1), Chapter 574, Laws of 2001, is insufficient to fund the school district block grants in fiscal year 2003 at the fiscal year 2002 level, the office of public instruction shall prorate the block grants to meet the remaining appropriation. School districts shall anticipate the prorated block grant amounts provided by the office of public instruction in their budgets for fiscal year 2003.

(3) Each year, 70% of each district's block grant must be distributed in November and 30% of each district's block grant must be distributed in May at the same time that guaranteed tax base aid is distributed.

(4) (a) The block grant for the district general fund is equal to the average amount received in fiscal years 2002 and 2003 by the district general fund from the block grants provided for in subsection (1). The block grant must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year.

(b) The block grant for the district transportation fund is equal to one-half of the average amount received in fiscal years 2002 and 2003 by the district transportation fund from the block grants provided for in subsection (1). The block grant must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year.

(c) (i) The combined fund block grant is equal to the average amount received in fiscal years 2002 and 2003 by the district tuition, bus depreciation reserve, building reserve, nonoperating, and adult education funds from the block grants provided for in subsection (1). The block grant must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year.

(ii) The school district may deposit the combined fund block grant into any budgeted fund of the district.

History: En. Sec. 244, Ch. 574, L. 2001; amd. Sec. 25, Ch. 13, Sp. L. August 2002; amd. Sec. 11, Ch. 550, L. 2003.

20-9-631. Countywide school retirement block grants. The office of public instruction shall distribute one-half of the amount appropriated for countywide school retirement in November and the remainder in May. The total amount for each county is as follows:

	FY 2002 Elementary Payment	FY 2002 High School Payment	FY 2003 Elementary Payment	FY 2003 High School Payment
Beaverhead	\$86,692	\$50,789	\$55,503	\$41,981
Big Horn	62,668	36,963	95,018	33,837
Blaine	61,160	10,193	46,437	81,145
Broadwater	0	92,686	0	34,949
Carbon	43,451	82,110	72,592	69,522
Carter	9,751	5,453	8,638	6,244
Cascade	349,056	192,848	280,363	141,301
Chouteau	75,384	41,034	60,978	30,825
Custer	78,925	36,930	57,608	32,128
Daniels	0	37,994	0	36,083
Dawson	85,568	38,722	64,693	24,827
Deer Lodge	39,980	17,059	35,062	14,748
Fallon	0	0	0	30,930
Fergus	119,028	78,809	86,528	52,925
Flathead	558,861	296,410	530,274	268,731
Gallatin	383,035	181,743	537,244	107,717
Garfield	12,337	10,170	12,100	4,620
Glacier	79,924	34,016	106,815	10,494
Golden Valley	0	16,716	0	14,952
Granite	14,074	48,026	12,758	31,458
Hill	142,867	82,538	130,460	77,730
Jefferson	116,679	59,523	143,931	59,751
Judith Basin	6,149	21,359	4,744	30,198
Lake	173,584	139,990	156,485	103,365
Lewis & Clark	344,112	211,726	370,732	173,725
Liberty	20,144	16,786	24,426	20,813
Lincoln	73,001	98,835	61,499	87,710
Madison	0	103,163	4,891	20,480
McCone	23,214	15,824	21,637	13,906
Meagher	13,654	10,678	10,682	10,715
Mineral	0	32,206	0	33,306
Missoula	487,129	362,756	587,637	357,669
Musselshell	30,675	21,577	48,959	41,250
Park	154,192	81,696	135,256	78,135
Petroleum	0	16,897	0	12,393
Phillips	10,502	95,084	103,759	54,793
Pondera	79,805	60,307	65,353	47,629
Powder River	18,815	15,011	19,026	8,573
Powell	69,695	22,666	71,009	30,326
Prairie	0	26,791	0	21,945
Ravalli	85,333	169,769	20,867	73,912
Richland	83,671	30,302	12,477	24,039
Roosevelt	71,090	60,329	96,278	61,038
Rosebud	359,662	286,411	478,891	129,268
Sanders	203,863	127,694	197,286	117,375
Sheridan	0	46,231	0	58,463
Silver Bow	249,821	141,541	193,304	119,358
Stillwater	91,487	75,926	99,893	58,767
Sweet Grass	36,996	36,327	24,214	12,316

Teton	57,760	41,547	45,217	40,769
Toole	43,323	51,399	36,109	73,362
Treasure	0	18,947	0	16,243
Valley	15,824	90,532	6,751	109,094
Wheatland	20,946	12,103	15,031	12,109
Wibaux	0	14,585	0	25,103
Yellowstone	1,125,488	643,136	1,077,273	615,945
Total	6,269,374	4,650,865	6,326,685	3,900,990

History: En. Sec. 245, Ch. 574, L. 2001; amd. Sec. 26, Ch. 13, Sp. L. August 2002; amd. Sec. 1, Ch. 518, L. 2003; amd. Sec. 12, Ch. 550, L. 2003.

20-9-632. Countywide school transportation block grants. (1) The office of public instruction shall distribute one-half of the amount appropriated for countywide school transportation in November and the remainder in May. The total amount for each county is as follows:

	FY 2002 Payment	FY 2003 Payment
Beaverhead	\$29,924	\$26,197
Big Horn	43,635	52,920
Blaine	3,727	13,433
Broadwater	14,935	21,769
Carbon	23,493	23,040
Carter	8,675	6,592
Cascade	84,382	43,722
Chouteau	33,063	27,043
Custer	7,069	6,272
Daniels	16,771	12,993
Dawson	21,356	14,001
Deer Lodge	14,392	12,532
Fallon	20,447	25,428
Fergus	58,765	29,415
Flathead	89,846	77,223
Gallatin	81,262	90,930
Garfield	17,284	7,135
Glacier	37,740	34,300
Golden Valley	3,547	3,664
Granite	8,153	6,858
Hill	46,409	40,781
Jefferson	36,329	34,817
Judith Basin	16,878	20,322
Lake	69,756	52,163
Lewis & Clark	58,287	69,535
Liberty	15,874	9,584
Lincoln	50,388	22,795
Madison	21,263	12,828
McCone	12,498	11,788
Meagher	4,237	6,976
Mineral	7,478	9,038
Missoula	93,969	94,480
Musselshell	12,945	20,627
Park	31,904	32,394
Petroleum	9,854	7,300
Phillips	31,080	43,872
Pondera	22,599	18,308
Powder River	21,304	21,795
Powell	16,622	14,507

Prairie	8,544	4,809
Ravalli	60,579	38,440
Richland	32,995	29,315
Roosevelt	25,740	40,216
Rosebud	97,820	90,850
Sanders	71,581	69,930
Sheridan	12,946	24,274
Silver Bow	21,872	18,381
Stillwater	27,358	17,543
Sweet Grass	14,996	6,340
Teton	28,202	20,759
Toole	17,208	15,592
Treasure	5,446	5,073
Valley	26,677	27,775
Wheatland	9,142	6,386
Wibaux	6,198	8,816
Yellowstone	149,314	146,210
Total	1,814,759	1,650,088

(2) The average of the block grants in fiscal years 2002 and 2003 must be increased by 0.76% in fiscal year 2004 and in each succeeding fiscal year.

History: En. Sec. 246, Ch. 574, L. 2001; amd. Sec. 27, Ch. 13, Sp. L. August 2002; amd. Sec. 2, Ch. 518, L. 2003.

Part 7 Educational Cooperative Agreements

Part Cross-References

Interlocal Cooperation Act, Title 7, ch. 11, part 1.

Authorization to create full service special education cooperatives, 20-7-451.

20-9-701. Definitions of prime and cooperating agencies. For the purposes of an interlocal cooperative agreement, the prime agency shall be the district or other public agency vested with the financial administration of the interlocal cooperative agreement under the terms of such agreement and the cooperating agency shall be any district or public agency other than a prime agency who is a party to the contract creating the interlocal cooperative agreement.

History: En. 75-7305 by Sec. 360, Ch. 5, L. 1971; R.C.M. 1947, 75-7305.

20-9-702. Financial administration of interlocal cooperative agreement. Any district contracting with other districts or other public agencies to establish an interlocal cooperative agreement under the provisions of Title 7, chapter 11, part 1, shall be subject to the provisions of 20-9-701, 20-9-703, and 20-9-704 for the purposes of the financial administration of such agreement.

History: En. 75-7304 by Sec. 359, Ch. 5, L. 1971; R.C.M. 1947, 75-7304.

20-9-703. District as prime agency. (1) When the prime agency is a district, it is authorized and required to establish a nonbudgeted interlocal cooperative fund for the purpose of the financial administration of the interlocal cooperative agreement. All revenues received, including federal, state, or other types of grant payments in direct support of the agreement and the financial support provided by cooperating agencies, shall be deposited in such fund. All financial support of the agreement contributed by a district designated as the prime agency may be transferred to the interlocal cooperative fund from any fund maintained by such district by resolution of the trustees. Any such transfer to the interlocal cooperative fund shall be used to finance those expenditures under the agreement which are comparable to those that are permitted by law to be made out of the fund from which the transfer was made and which are within the final budget for the fund from which the transfer was made. No transfer shall be made from the miscellaneous federal programs fund without the express approval of the superintendent of public instruction.

(2) All expenditures in support of the interlocal cooperative agreement shall be made from the interlocal cooperative fund established by the district which is the prime agency, except that

expenditures in support of such agreement may be made from the miscellaneous federal programs fund when the express approval of the superintendent of public instruction is given.

History: En. 75-7306 by Sec. 361, Ch. 5, L. 1971; R.C.M. 1947, 75-7306.

20-9-704. District as cooperating agency. (1) When a district is the cooperating agency, it shall transfer its financial support under the interlocal cooperative contract to the prime agency by district warrant.

(2) The financial support may be provided from any fund maintained by the district. Any such fund utilized for the financial support of an interlocal cooperative agreement shall finance only those expenditures of such agreement that are comparable to those permitted under the statutory provisions creating such fund, and such financial support must be within the currently adopted budget for such fund. No financial support shall be financed from the miscellaneous federal programs fund without the express approval of the superintendent of public instruction.

History: En. 75-7307 by Sec. 362, Ch. 5, L. 1971; R.C.M. 1947, 75-7307.

20-9-705. Joint interstate school agreements. (1) The trustees of any district adjacent to another state may enter into a contract with a school district in such adjoining state to provide for the joint erection, operation, and maintenance of school facilities for both districts upon such terms and conditions as may be mutually agreed to by such districts and as are in accord with this section. Any such contract proposed for adoption by the trustees shall be in the form and contain only terms that may be prescribed by the superintendent of public instruction, and any such contract shall be approved by the superintendent of public instruction before it is considered by the electors of the district.

(2) Before any contract negotiated under the provisions of this section shall be executed, the trustees shall call an election under the provisions of 20-20-201 and submit to the qualified electors of the district the proposition that such contract be approved and that the trustees execute such contract. No agreement shall be valid until it has been approved at an election. The electors at the election shall be qualified to vote under the provisions of 20-20-301, and the election shall be conducted under the school election provisions of this title. The ballot for the election shall be substantially in the following form:

PROPOSITION

SCHOOL DISTRICT NO., COUNTY

Shall the trustees of this district be authorized and directed to execute the proposed contract with school district number of County, state of, for the purpose of (insert the purpose of such contract)?

- ☐ FOR execution of contract.
- ☐ AGAINST execution of contract.

(3) The trustees of any district executing a contract under this section shall have the power and authority to levy taxes and issue bonds for the purpose of erecting and maintaining the facilities authorized by this section. Furthermore, the facilities erected or maintained under this section may be located in either Montana or the adjoining state.

History: En. 75-7308 by Sec. 363, Ch. 5, L. 1971; R.C.M. 1947, 75-7308.

Cross-References

Mail ballot elections prohibited, 13-19-104.
School elections, Title 20, ch. 20.

20-9-706. Running start program — authorizing class credits at postsecondary institution — eligibility — payment for credits. (1) As used in this section, “postsecondary institution” means a unit of the Montana university system, a public community college, or a tribal college.

(2) A school district may enter into an interlocal agreement pursuant to Title 7, chapter 11, with a postsecondary institution to institute a “running start” program to allow 11th and 12th grade students, as defined by the district, to attend classes at the postsecondary institution at a cost determined by the interlocal agreement and to obtain credits in classes not available through the school district.

(3) An agreement entered into by the district and the postsecondary institution must state the amount for each credit to be paid to the postsecondary institution by the district or the student.

(4) To participate in the program, a student shall complete a running start application provided by the district. The district shall determine whether the student has the skills needed to succeed in the proposed college coursework. If accepted, a student may earn both high school and college credits as determined by the interlocal agreement.

(5) In registering 11th and 12th grade students in the program, a postsecondary institution may not displace adult students attending the postsecondary institution.

(6) If accepted into the program, the student is responsible for transportation, books, and all supplies.

(7) If a student accepted into the program drops out of a class or classes at the postsecondary institution during the drop period established by the postsecondary institution, the postsecondary institution shall reimburse the district or the student the cost associated with the student's credits as determined by the interlocal agreement.

History: En. Sec. 1, Ch. 377, L. 2001.

20-9-707. Agreement with accredited Montana job corps program. (1) The trustees of a school district may enter into an interlocal cooperative agreement for the ensuing school fiscal year under the provisions of Title 7, chapter 11, part 1, with a Montana job corps program accredited by the northwest association of schools and colleges to provide educational or vocational services that are supplemental to the educational programs offered by the resident school district.

(2) A student who receives educational or vocational services at a Montana job corps program pursuant to an agreement authorized under subsection (1) must be enrolled, for purposes of calculating average number belonging, in a public school in the student's district of residence. Credits taken at the accredited Montana job corps program must be approved by the school district and meet the requirements for graduation at a school in the student's district of residence, must be taught by an instructor who has a current and appropriate Montana high school certification, and must be reported by the institution to the student's district of residence. Upon accumulating the necessary credits at either a school in the district of residence or at an accredited Montana job corps program pursuant to an interlocal cooperative agreement, a student must be allowed to graduate from the school in the student's district of residence.

(3) A school district that, pursuant to an interlocal cooperative agreement, allows an enrolled student to attend a Montana job corps program accredited as prescribed in subsection (1) is not responsible for payment of the student's transportation costs to the job corps program.

(4) A student attending a job corps program may not claim the job corps program's facility as the student's residence for the purposes of this section.

History: En. Sec. 1, Ch. 462, L. 2001; amd. Sec. 3, Ch. 132, L. 2005.

Part 8 Emergency School Closure

Part Cross-References

Disaster and emergency services, Title 10, ch. 3.

School terms and holidays — released time, Title 20, ch. 1, part 3.

Energy supply emergencies, Title 90, ch. 4, part 3.

20-9-801. Purpose. This part governs a school district's entitlement to state equalization apportionment funds for any school year during which the school district is unable to conduct the minimum aggregate hours by grade required by 20-1-301 by reason of one or more unforeseen emergencies. The provisions of this part must be narrowly interpreted.

History: En. Sec. 1, Ch. 288, L. 1979; amd. Sec. 8, Ch. 430, L. 1997; amd. Sec. 12, Ch. 138, L. 2005.

20-9-802. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Declaration of emergency" means a declaration by a board of trustees that an unforeseen emergency has occurred in the district.

(2) “Reasonable effort” means the rescheduling or extension of the school district’s instructional calendar in an effort to attain the minimum aggregate hours required by law by:

(a) extending the school year 12 hours for 1st through 3rd grades and 18 hours for 4th through 12th grades or the equivalent aggregate hours of pupil instruction beyond the last scheduled day; or

(b) the use of scheduled vacation days.

(3) “School day” means the school day set by the trustees as provided in 20-1-302.

(4) “Unforeseen emergency” means a fire, flood, explosion, storm, earthquake, riot, insurrection, community disaster, or act of God or a combination of the foregoing that acts as a principal cause for a school district’s inability to conduct 1 or more scheduled school days.

History: En. Sec. 2, Ch. 288, L. 1979; amd. Sec. 1, Ch. 85, L. 1981; amd. Sec. 9, Ch. 430, L. 1997; amd. Sec. 13, Ch. 138, L. 2005.

20-9-803. Repealed. Sec. 11, Ch. 430, L. 1997.

History: En. Sec. 3, Ch. 288, L. 1979.

20-9-804. Repealed. Sec. 11, Ch. 430, L. 1997.

History: En. Sec. 4, Ch. 288, L. 1979.

20-9-805. Rate of reduction in annual apportionment entitlement. (1) Except as provided in 20-9-806(2), for each hour short of the minimum number of aggregate hours required by law that a school district fails to conduct by reason of one or more unforeseen emergencies, the superintendent of public instruction shall reduce the equalization apportionment and entitlement of the district for that school year by a proportionate amount.

(2) Kindergarten, grade 1 through 3, and grade 4 through 12 programs must be considered separately for the purpose of computing compliance with minimum aggregate hour requirements and any loss of apportionment.

History: En. Sec. 5, Ch. 288, L. 1979; amd. Sec. 7, Ch. 299, L. 1985; amd. Sec. 14, Ch. 138, L. 2005.

20-9-806. School closure by declaration of emergency. (1) (a) Except as provided in subsection (2), if a school is closed by reason of an unforeseen emergency that results in a declaration of emergency by the board of trustees, the trustees may later adopt a resolution that a reasonable effort has been made to reschedule the pupil-instruction time lost because of the unforeseen emergency. If the trustees adopt the resolution, the pupil-instruction time lost during the closure need not be rescheduled to meet the minimum requirement for aggregate hours that a school district must conduct during the school year in order to be entitled to full annual equalization apportionment.

(b) At least 3 school days or the equivalent aggregate hours must have been made up before the trustees can declare that a reasonable effort has been made.

(2) The board of trustees may close school for 1 school day each school year because of an unforeseen emergency and may not be required to reschedule the pupil-instruction time lost because of the unforeseen emergency.

History: En. Sec. 2, Ch. 85, L. 1981; amd. Sec. 10, Ch. 430, L. 1997; amd. Sec. 15, Ch. 138, L. 2005.

Cross-References

Pupil-instruction-related days, 20-1-304.

CHAPTER 10 TRANSPORTATION AND FOOD SERVICES

Part 1 — School Buses and Transportation

- 20-10-101. Definitions.
- 20-10-102. School bus requirements.
- 20-10-103. School bus driver qualifications.
- 20-10-104. Penalty for violating law or rules.
- 20-10-105. Determination of residence.
- 20-10-106. Determination of mileage distances.
- 20-10-107. Power of trustees.
- 20-10-108. Two-way radio operation.
- 20-10-109. Liability insurance for school bus.
- 20-10-110. School bus purchase — contract — bids.
- 20-10-111. Duties of board of public education.

- 20-10-112. Duties of superintendent of public instruction.
- 20-10-113 through 20-10-120 reserved.
- 20-10-121. Duty of trustees to provide transportation — types of transportation — bus riding time limitation.
- 20-10-122. Discretionary provision of transportation and payment for this transportation.
- 20-10-123. Provision of transportation for nonpublic school children.
- 20-10-124. Private party contract for transportation — individual transportation contract.
- 20-10-125. Bid letting for contract bus — payments under transportation contract.
- 20-10-126. Establishment of transportation service areas.
- 20-10-127. Repealed.
- 20-10-128. Repealed.
- 20-10-129 and 20-10-130 reserved.
- 20-10-131. County transportation committee membership.
- 20-10-132. Duties of county transportation committee.
- 20-10-133 through 20-10-140 reserved.
- 20-10-141. Schedule of maximum reimbursement by mileage rates.
- 20-10-142. Schedule of maximum reimbursement for individual transportation.
- 20-10-143. Budgeting for transportation and transmittal of transportation contracts.
- 20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget.
- 20-10-145. State transportation reimbursement.
- 20-10-146. County transportation reimbursement.
- 20-10-147. Bus depreciation reserve fund.

Part 2 — Food Services

- 20-10-201. Acceptance, expenditure, and administration of federal school food services money.
- 20-10-202. Records, reports, and reviews.
- 20-10-203. School food commodities.
- 20-10-204. Duties of trustees.
- 20-10-205. Allocation of federal funds to school food services fund for federally connected, indigent pupils.
- 20-10-206. Pupils in state institutional schools included.
- 20-10-207. School food services fund.
- 20-10-208. Terminated.

Part 1 School Buses and Transportation

Part Cross-References

- Rules for determining residence, 1-1-215.
- School property, Title 20, ch. 6, part 6.
- Nonoperating fund to include funds for transportation of resident pupils, 20-9-505.
- Meeting or passing school bus, 61-8-351.

20-10-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

- (1) “Bus route” means a route approved by the board of trustees of a school district and by the county transportation committee.
- (2) “Eligible transportee” means a public school pupil who:
 - (a) is 5 years of age or older and has not reached the age of 21 on or before September 10 of the current school year or who is a preschool child with a disability between the ages of 3 and 6;
 - (b) is a resident of the state of Montana;
 - (c) regardless of district and county boundaries:
 - (i) resides at least 3 miles, over the shortest practical route, from the nearest operating public elementary school or public high school, whichever the case may be; or
 - (ii) has transportation identified as a related service in an individualized education program as developed and implemented in accordance with the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.; and
 - (d) is considered to reside with a parent or guardian who maintains legal residence within the boundaries of the district furnishing the transportation regardless of where the eligible transportee actually lives when attending school.
- (3) “Passenger seating position” means, as defined in 49 CFR 571.222, the space on a school bus allocated for one passenger.
- (4) (a) “School bus” means, except as provided in subsection (4)(b), any motor vehicle that:

(i) complies with the bus standards established by the board of public education as verified by the department of justice's semiannual inspection of school buses and the superintendent of public instruction; and

(ii) is owned by a district or other public agency and operated for the transportation of pupils to or from school or owned by a carrier under contract with a district or public agency to provide transportation of pupils to or from school.

(b) A school bus does not include a vehicle that is:

(i) privately owned and not operated for compensation under this title;

(ii) privately owned and operated for reimbursement under 20-10-142;

(iii) either district-owned or privately owned, designed to carry not more than nine passengers, and used to transport pupils to or from activity events or to transport pupils to their homes in case of illness or other emergency situations; or

(iv) an over-the-road passenger coach used only to transport pupils to activity events.

(5) "Transportation" means:

(a) a district's conveyance of a pupil by a school bus between the pupil's legal residence or an officially designated bus stop and the school designated by the trustees for the pupil's attendance; or

(b) "individual transportation" by which a district is relieved of actually conveying a pupil. Individual transportation may include paying the parent or guardian for conveying the pupil, reimbursing the parent or guardian for the pupil's board and room, or providing supervised correspondence study or supervised home study.

(6) "Transportation service area" means the geographic area of responsibility for school bus transportation for each district that operates a school bus transportation program.

History: (1), (2) En. Sec. 278, Ch. 5, L. 1971; amd. Sec. 1, Ch. 61, L. 1974; amd. Sec. 3, Ch. 371, L. 1975; Sec. 75-7001, R.C.M. 1947; (3) En. Sec. 279, Ch. 5, L. 1971; amd. Sec. 2, Ch. 141, L. 1973; Sec. 75-7002, R.C.M. 1947; R.C.M. 1947, 75-7001, 75-7002(part); amd. Sec. 1, Ch. 525, L. 1983; amd. Sec. 10, Ch. 249, L. 1991; amd. Sec. 43, Ch. 767, L. 1991; amd. Sec. 1, Ch. 359, L. 1993; amd. Sec. 1, Ch. 298, L. 1995; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 9, Ch. 550, L. 2003.

Cross-References

Rules for determining residence, 1-1-215.

20-10-102. School bus requirements. (1) A school bus may be operated by the district or other public agency for the conveyance of pupils or may be privately operated by a carrier to provide such conveyance of pupils under contract with a district or other public agency.

(2) Every school bus shall bear on the front and rear of the bus a plainly visible sign containing the words "school bus" in letters at least 8 inches in height.

(3) When a school bus is operated on a highway for purposes other than transporting pupils to and from school or for school functions, all markings identifying it as a school bus shall be concealed.

History: En. 75-7002 by Sec. 279, Ch. 5, L. 1971; amd. Sec. 2, Ch. 141, L. 1973; R.C.M. 1947, 75-7002(part).

Cross-References

Power of Board of Public Education to adopt design, construction, and operation standards, 20-2-121.

Lettering requirement under highway code, 61-8-351.

Lighting equipment, 61-8-351, 61-8-352, 61-9-226, 61-9-402.

When studded tires permitted — tires for school buses generally, 61-9-406.

Safety glazing material required, 61-9-408.

Semiannual inspection of school buses, 61-9-502.

20-10-103. School bus driver qualifications. A driver of a school bus is qualified to drive a school bus if the driver:

(1) is not less than 18 years of age;

(2) is of good moral character;

(3) is the holder of a commercial driver's license;

(4) has filed with the district a satisfactory medical examination report, on a form approved by the United States department of transportation, signed by any physician licensed in the United States or, if acceptable to an insurance carrier, any licensed physician;

(5) has completed a basic first aid course and holds a valid basic first aid certificate from an authorized instructor. The issuance of the certificate is governed by rules established by the superintendent of public instruction, provided that the rules may suspend this requirement for a

reasonable period of time if there has been an inadequate opportunity for securing the basic first aid course and certificate.

(6) has complied with any other qualifications established by the board of public education; and

(7) has filed with the county superintendent a certificate from the trustees of the district for which the school bus is to be driven, certifying compliance with the driver qualifications enumerated in this section.

History: En. 75-7003 by Sec. 280, Ch. 5, L. 1971; amd. Sec. 1, Ch. 50, L. 1977; amd. Sec. 1, Ch. 151, L. 1977; R.C.M. 1947, 75-7003; amd. Sec. 37, Ch. 443, L. 1987; amd. Sec. 1, Ch. 311, L. 1989; amd. Sec. 3, Ch. 195, L. 1993; amd. Sec. 2, Ch. 298, L. 1995.

Cross-References

Power of trustees to employ and dismiss bus drivers, 20-3-324.

Chauffeur's license — special restrictions, 61-5-112.

20-10-104. Penalty for violating law or rules. (1) Every district, its trustees and employees, and every person under a transportation contract with a district is subject to the policies prescribed by the board of public education and the rules prescribed by the superintendent of public instruction. When a district knowingly violates a transportation law or board of public education transportation policy, the district shall forfeit any reimbursement otherwise payable under 20-10-145 and 20-10-146 for any bus miles actually traveled during that fiscal year in violation of the law or policies.

(2) A district knowingly violates a transportation law or board of public education policy when it operates a bus route in a manner that does not comply with state law or board policy related to student safety. As provided in 20-10-141(1), a district that operates a bus route not approved by its county transportation committee may not receive transportation reimbursement on that route, but if the route is operated in compliance with transportation law, the operation of the routes is not a violation that will result in the forfeiture of all transportation aid to the district.

(3) The county superintendent shall suspend all reimbursements payable to the district under 20-10-145 and 20-10-146 for all miles being traveled, including both miles being traveled in compliance with the transportation laws or policies and miles being traveled in violation of the transportation laws or policies, until the district corrects the violation. When the district corrects the violation, the county superintendent shall pay all reimbursements otherwise payable under 20-10-145 and 20-10-146, including amounts suspended during the violation, but the amount forfeited under subsection (1) may not be paid to the district.

(4) When a person operating a bus under contract with a district knowingly fails to comply with the transportation law or the board of public education transportation policies, the district may not pay the person for any bus miles traveled during the contract year in violation of law or policies. Upon discovering a violation, the trustees of the district shall give written notice to the person that unless the violation is corrected within 10 days of the giving of notice, the contract will be canceled. The trustees of a district shall order the operation of a bus operated under contract suspended when the bus is being operated in violation of transportation law or policies and the trustees find that the violation jeopardizes the safety of pupils.

History: En. 75-7006 by Sec. 283, Ch. 5, L. 1971; amd. Sec. 1, Ch. 78, L. 1974; R.C.M. 1947, 75-7006; amd. Sec. 1, Ch. 427, L. 1997.

Cross-References

Penalty for violation of school laws, 20-1-207.

Knowingly defined, 45-2-101.

20-10-105. Determination of residence. When the residence of an eligible transportee is a matter of controversy and is an issue before a board of trustees, a county transportation committee, or the superintendent of public instruction, except as provided in 20-9-707, the residence must be established on the basis of the general state residence law as provided in 1-1-215. Whenever the state is determined to be responsible for paying tuition for any pupil in accordance with 20-5-321 through 20-5-323, the residence of the pupil for tuition purposes is the residence of the pupil for transportation purposes.

History: En. 75-7016 by Sec. 293, Ch. 5, L. 1971; amd. Sec. 20, Ch. 266, L. 1977; R.C.M. 1947, 75-7016; amd. Sec. 16, Ch. 563, L. 1993; amd. Sec. 4, Ch. 132, L. 2005; amd. Sec. 7, Ch. 463, L. 2005.

20-10-106. Determination of mileage distances. When the mileage distance that transportation services are to be provided is a matter of controversy and is an issue before a board of trustees, a county transportation committee, or the superintendent of public instruction, the mileage shall be established on the following basis:

(1) The distance in mileage shall be measured by a vehicle equipped with an accurate odometer.

(2) A representative of the applicable district and a parent or guardian of the child to be transported shall be present when the distance is measured.

(3) The measurement shall begin 6 yards from the family home and end 6 yards from the entrance of the school grounds closest to the route.

(4) The route traversed for the measurement shall be the route designated by the trustees, except that the route shall be reasonably passable during the entire school fiscal year by the vehicle that provides the child's transportation. In determining reasonable passage, a route may not be disqualified because it is impassable during temporary, extreme weather conditions such as rains, snow, or floods.

History: En. 75-7017 by Sec. 294, Ch. 5, L. 1971; amd. Sec. 21, Ch. 266, L. 1977; R.C.M. 1947, 75-7017.

20-10-107. Power of trustees. The trustees of any district shall have the power to:

(1) purchase or rent a school bus;

(2) purchase or rent a two-way radio for a school bus when the trustees authorize a two-way radio as standard equipment in a school bus because such bus is operated where weather and road conditions may constitute a hazard to the safety of the school pupil passengers;

(3) provide for the operation, maintenance, and insurance of a school bus or a two-way radio owned or rented by the district; or

(4) contract with a private party for the transportation of eligible transportees, and such contract shall not exceed the term of 5 years.

History: En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; R.C.M. 1947, 75-7011(part).

20-10-108. Two-way radio operation. When the trustees authorize a two-way radio as standard equipment on a school bus, the two-way radio may be operated on the same frequency as that used by the Montana highway patrol and the sheriff of the county when their permission and the permission of the federal communications commission is secured. If permission is not secured from these agencies, the frequency assigned by the federal communications commission shall be used for the operation of the two-way radio.

History: En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; R.C.M. 1947, 75-7011(part).

20-10-109. Liability insurance for school bus. Whenever a bus is owned and operated by a district or the bus is operated by a private party under a contract but no condition of such contract requires the private party to carry liability insurance, the trustees shall carry automobile bodily injury and liability insurance in an amount not less than \$10,000 per person and \$100,000 for each accident for each bus operated by or under contract with the district.

History: En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; R.C.M. 1947, 75-7011(part).

20-10-110. School bus purchase — contract — bids. When a district purchases a school bus, the trustees may purchase such school bus under an installment contract which will be completely executed within 3 years from the date of the purchase. The trustees also may purchase a school bus without advertising for bids under the provisions of 20-9-204.

History: En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; R.C.M. 1947, 75-7011(part).

20-10-111. Duties of board of public education. (1) The board of public education, with the advice of the Montana department of justice and the superintendent of public instruction, shall adopt and enforce policies, not inconsistent with the motor vehicle laws, to provide uniform standards and regulations for the design, construction, and operation of school buses in the state of Montana. The policies must:

(a) prescribe minimum standards for the design, construction, and operation of school buses consistent with:

(i) the recommendations adopted by the national conference on school transportation; and
(ii) the federal motor vehicle safety standards;

(b) prescribe standards and specifications for the lighting equipment and special warning devices to be carried by school buses in conformity with:

- (i) current specifications approved by the society of automobile engineers;
- (ii) motor vehicle laws; and
- (iii) the requirement that all school buses have an alternately flashing prewarning lighting system of four amber signal lamps to be used while preparing to stop and an alternately flashing warning lighting system of four red signal lamps to be used while stopped in accordance with 61-9-402;
- (c) establish other driver qualifications considered necessary in addition to the qualifications required in 20-10-103;
- (d) prescribe criteria for the establishment of transportation service areas for school bus purposes by the county transportation committee that shall allow for the establishment of service areas without regard to the district boundary lines within the county;
- (e) prescribe other criteria for the determination of the residence of a pupil that may be considered necessary in addition to the criteria established in 20-10-105; and
- (f) prescribe standards for the measurement of the child seating capacity of school buses, to be known as the rated capacity.

(2) The board of public education shall prescribe other policies necessary for the proper administration and operation of individual transportation programs that are consistent with the transportation provisions of this title.

History: En. 75-7004 by Sec. 281, Ch. 5, L. 1971; amd. Sec. 1, Ch. 416, L. 1973; R.C.M. 1947, 75-7004; amd. Sec. 1, Ch. 455, L. 1981; amd. Sec. 1, Ch. 280, L. 1989; amd. Sec. 13, Ch. 343, L. 1999; amd. Sec. 19, Ch. 237, L. 2001.

Cross-References

Lighting equipment, 61-8-351, 61-8-352, 61-9-226, 61-9-402.

20-10-112. Duties of superintendent of public instruction. In order to have a uniform and equal provision of transportation by all districts in the state of Montana, the superintendent of public instruction shall:

- (1) prescribe rules and forms for the implementation and administration of the transportation policies adopted by the board of public education;
- (2) prescribe rules for the approval of school bus routing by the county transportation committee;
- (3) prescribe the format of the contract for individual transportation and supply each county superintendent with a sufficient number of such contracts;
- (4) prescribe rules for the approval of individual transportation contracts, including the increases of the schedule rates due to isolation under the policy of the board of public education, and provide a degree-of-isolation chart to school district trustees to serve as a guide;
- (5) approve, disapprove, or adjust all school bus routing submitted by the county superintendent;
- (6) approve, disapprove, or adjust all individual transportation contracts submitted by the county superintendent;
- (7) prescribe rules for the consideration of controversies appealed to him and rule on such controversies; and
- (8) disburse the state transportation reimbursement in accordance with the provisions of law and the transportation policies of the board of public education.

History: En. 75-7005 by Sec. 282, Ch. 5, L. 1971; amd. Sec. 2, Ch. 416, L. 1973; R.C.M. 1947, 75-7005.

20-10-113 through 20-10-120 reserved.

20-10-121. Duty of trustees to provide transportation — types of transportation — bus riding time limitation. (1) The trustees of any district may furnish transportation to an eligible transportee who attends a school of the district or has been granted permission to attend a school outside of the district. Whenever the trustees of a district provide transportation for any eligible transportee, the trustees must provide all eligible transportees of the district with transportation. The trustees shall furnish transportation when directed to do so by the county transportation committee and such direction is upheld by the superintendent of public instruction.

(2) The tendering of a contract to the parent or guardian whereby the district would pay the parent or guardian for individually transporting the pupil or pupils shall fulfill the district's

obligation to furnish transportation for an eligible transportee. The parent or guardian of an eligible transportee may, at his discretion, provide transportation or arrange for transportation for his child at his own expense to any district willing to accept his child.

(3) The type of transportation provided by a district may be:

(a) by a school bus; or

(b) by such individual transportation as:

(i) paying the parent or guardian for individually transporting the pupil;

(ii) paying board and room reimbursements;

(iii) providing supervised correspondence study; or

(iv) providing supervised home study.

(4) When the parent or guardian of an elementary pupil consents to a trip of over 1 hour, the trustees may require such eligible transportee to ride a school bus for more than 1 hour per trip.

History: En. 75-7008 by Sec. 285, Ch. 5, L. 1971; amd. Sec. 1, Ch. 245, L. 1973; R.C.M. 1947, 75-7008.

Cross-References

Supervised correspondence study, 20-7-116.

20-10-122. Discretionary provision of transportation and payment for this transportation. (1) The trustees of any district also may provide school bus transportation to any pupil of a public school who is not an eligible transportee of the district:

(a) on a school bus conveying eligible transportees when the ineligible transportee will not displace an eligible transportee from such school bus because of the lack of seating capacity;

(b) on a school bus operated by the district for the sole purpose of providing transportation for ineligible transportees. Such school bus shall service those children living the greatest distance from the school to be attended.

(c) on a school bus operated for the purpose of relieving congestion in a school building or to avoid the necessity of erecting a new building or for any other reasons of economy or convenience.

(2) When the trustees of a district provide school bus transportation to an ineligible transportee under the conditions of subsection (1)(a) or (1)(b), the district may charge each ineligible transportee his proportionate share, as determined by the trustees, of the cost of operating such school bus. Money realized from such payments shall be deposited to the credit of the transportation fund.

History: En. 75-7009 by Sec. 286, Ch. 5, L. 1971; R.C.M. 1947, 75-7009.

Cross-References

Transportation fund as budgeted fund, 20-9-201.

20-10-123. Provision of transportation for nonpublic school children. Any child attending a nonpublic school may ride a school bus when a permit to ride such school bus is secured from the operating district by the parent or guardian of such nonpublic school child and when there is seating capacity available on such school bus. When a nonpublic school child rides a school bus, the operating district may charge such child his proportionate share, as determined by the trustees, of the cost of operating such school bus. Money realized from such payments shall be deposited to the credit of the transportation fund.

History: En. 75-7010 by Sec. 287, Ch. 5, L. 1971; R.C.M. 1947, 75-7010; amd. Sec. 1, Ch. 320, L. 1987.

Cross-References

Transportation fund as budgeted fund, 20-9-201.

20-10-124. Private party contract for transportation — individual transportation contract. (1) When the trustees contract with any private party to provide transportation to eligible transportees, the private party shall comply with the regulations of the board of public education for the standards of equipment, operation and safety of the school bus, and qualifications of the driver. The trustees may require added safeguards by supplementing the board of public education policies in the contract with additional requirements for bus specifications, age of drivers, liability insurance, operating speed, or any other contractual condition considered necessary by the trustees.

(2) Any school bus transportation by a private party or individual transportation that is furnished by a district must be under contract, and district, county, or state money may not be paid for transportation services to any person or firm who does not hold a legal contract with the district. Transportation contracts for the ensuing year must be completed by the fourth Monday of June, except when an eligible transportee establishes residence in the district after the fourth

Monday of June and a contingency amount is included in the regular transportation budget or an emergency transportation budget is adopted.

(3) Transportation contracts between a district and a private party for the provision of school bus transportation must:

(a) be completed in triplicate, with one copy for the county superintendent, one copy for the private party, and one copy for the district;

(b) conform to the transportation law, policies of the board of public education, and rules of the superintendent of public instruction; and

(c) be signed by the presiding officer of the trustees and the private party.

(4) A transportation contract between a parent or guardian of an eligible transportee and a district for the provision of individual transportation is subject to the following requirements:

(a) it must be completed in quadruplicate, with one copy for the parent or guardian, one copy for the district, one copy for the county superintendent, and one copy for the superintendent of public instruction;

(b) it must be completed on forms promulgated by the superintendent of public instruction;

(c) the parent or guardian shall sign an affidavit attesting to the place of residence of the child or children; and

(d) it must be signed by the presiding officer of the trustees and the parent or guardian of the eligible transportees.

History: (1)En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; Sec. 75-7011, R.C.M. 1947; (2) thru (4)En. 75-7012 by Sec. 289, Ch. 5, L. 1971; Sec. 75-7012, R.C.M. 1947; R.C.M. 1947, 75-7011(part), 75-7012; amd. Sec. 31, Ch. 22, L. 1997.

Cross-References

Conflicts of interests, letting contracts, calling for bids, 20-9-204.

Trustees to execute all contracts, 20-9-213.

20-10-125. Bid letting for contract bus — payments under transportation contract. (1) Before any contract with a private party for the provision of school bus transportation is awarded, the trustees shall:

(a) secure bids by publishing during a period of 21 days at least three calls for bids in a newspaper of the county that will give notice to the largest number of people of the district or in the official newspaper of the county; the trustees shall let the contract to the lowest responsible bidder, and the trustees shall have the right to reject any and all bids; or

(b) negotiate a new contract with the current school bus contractor, provided the negotiated contract costs do not exceed by more than 12% per year the basic costs of the previous year's contract. Such a negotiated contract can be entered into only at a public meeting of the trustees at which meeting the patrons of the district may appear and be heard. Notice of the meeting must have been published in a newspaper of wide circulation within the district at least 1 week prior to the meeting.

(2) The provisions of this section for awarding a contract for school bus transportation shall be subject to the provisions of 20-9-204.

(3) The trustees shall not expend any moneys of the district for school bus transportation by a private party or for individual transportation unless:

(a) a contract for such transportation services has been completed; and

(b) such contracted services for school bus transportation by a private party have been actually furnished except that the failure to perform may be excused by the trustees for reasons not under the control of the contractor; or

(c) such contracted services for individual transportation have been actually furnished as confirmed by the actual attendance of school by the eligible transportees and recorded on the school attendance records or, in the case of a supervised correspondence course or supervised home study, as confirmed by the trustees; except that the contracted services furnished one way on any school day shall be reimbursed at one-half the daily contract amount.

History: En. 75-7013 by Sec. 290, Ch. 5, L. 1971; amd. Sec. 1, Ch. 362, L. 1973; R.C.M. 1947, 75-7013; amd. Sec. 1, Ch. 349, L. 1979; amd. Sec. 1, Ch. 97, L. 1981.

Cross-References

Open meetings, Title 2, ch. 3, part 2.

Conflict of interest, 20-1-205.

Meetings and quorum, 20-3-322.

Supervised correspondence or home study as exception to compulsory enrollment, 20-5-102.

Supervised correspondence study, 20-7-116.

Trustees to execute all contracts, 20-9-213.

20-10-126. Establishment of transportation service areas. (1) The territory of a transportation service area is the territory of a school district unless the county transportation committee approves alternative boundaries after determining that the adjustments will improve pupil safety, transportation efficiency, or the cost-effectiveness of the pupil transportation system of the county.

(2) (a) Except as provided in subsection (2)(b), a district may not extend a bus route to transport pupils from outside its transportation service area unless the district has a written agreement with the district that the county transportation committee has assigned to transport the pupils.

(b) A district may extend a bus route across another transportation service area if the district determines that it is necessary in order to provide transportation to pupils in the district's own transportation service area. Under this subsection (2)(b), a district may not transport pupils from outside its transportation service area.

(3) When the trustees of two or more districts enter into a written agreement to authorize transportation services among transportation service areas, a copy of the agreement must be submitted to the county superintendent and approved by the county transportation committee. Upon approval by the committee, the transportation agreements are valid for the current school year.

(4) The trustees of any district who object to a particular bus route or transportation service area to which the district has been assigned may request a transfer to another bus route or transportation service area. The county transportation committee may transfer the territory of the district to an adjacent transportation service area or approved bus route with the consent of the district providing transportation in the adjacent transportation service area.

(5) The trustees of any district who object to a bus route operated by another district may bring that route to the attention of the county transportation committee. If the committee agrees that the district is operating a portion of its route as an unapproved route outside of its district boundaries, the committee shall file with the district a written warning concerning the unapproved route, and if the district, in spite of the warning, continues to operate the route, the committee may withdraw its approval of the entire route.

(6) If the qualified electors of the district object to the decision of the county transportation committee and the adjacent district is willing to provide school bus service, 20% of the qualified electors, as prescribed in 20-20-301, may petition the trustees to conduct an election on the proposition that the territory of the district be transferred for pupil transportation purposes to the adjacent transportation service area. If a satisfactory petition is presented to the trustees, the trustees shall call an election on the proposition in accordance with 20-20-201 for the next ensuing regular school election day. The election must be conducted in accordance with the school election laws. If a majority of those voting at the election approve the transfer, the transfer is effective on July 1 of the ensuing school fiscal year.

(7) Unless a transfer of territory from one transportation service area or approved bus route to another area or bus route is approved by the superintendent of public instruction and the county transportation committee, the state transportation reimbursement is limited to the reimbursement amount for pupil transportation to the nearest operating public elementary school or public high school, whichever is appropriate for the affected pupils.

History: En. Sec. 8, Ch. 298, L. 1995; amd. Sec. 2, Ch. 427, L. 1997; amd. Sec. 1, Ch. 508, L. 2005.

Cross-References

Interlocal Cooperation Act, Title 7, ch. 11, part 1.

20-10-127. Repealed. Sec. 13, Ch. 550, L. 2003.

History: En. Sec. 9, Ch. 298, L. 1995.

20-10-128. Repealed. Sec. 13, Ch. 550, L. 2003.

History: En. Sec. 10, Ch. 298, L. 1995.

20-10-129 and 20-10-130 reserved.

20-10-131. County transportation committee membership. (1) To coordinate the orderly provision of a uniform transportation program within a county, there must be a county transportation committee created in each county of the state of Montana. The membership of the committee consists of:

- (a) the county superintendent;
- (b) the presiding officer of the board of county commissioners or a member of the board designated by the presiding officer;
- (c) except for a K-12 school district, a trustee or district employee designated by the trustees of each high school district of the county;
- (d) one representative from each high school district of the county who is a trustee of an elementary district encompassed within the high school district and who has been selected at a meeting of the trustees of the elementary districts;
- (e) two representatives of each K-12 school district of the county, each of whom is either a trustee or a district employee designated by the trustees; and
- (f) a representative of a district of another county when the transportation services of the district are affected by the actions of the county transportation committee, but the representative has a voice only in matters affecting transportation within the district or by the district.

(2) The county transportation committee must have at least five members, and if this minimum membership cannot be realized in the manner prescribed in subsections (1)(a) through (1)(e), the county superintendent shall appoint a sufficient number of members to satisfy the minimum membership requirement.

(3) The county superintendent is the presiding officer of the county transportation committee, and a quorum is a majority of the membership. A quorum must be present for the committee to conduct business. The committee shall meet on the call of the presiding officer or any three members of the committee.

History: En. 75-7014 by Sec. 291, Ch. 5, L. 1971; R.C.M. 1947, 75-7014; amd. Sec. 3, Ch. 298, L. 1995.

20-10-132. Duties of county transportation committee. (1) It is the duty of the county transportation committee to:

- (a) establish the transportation service areas within the county, without regard to district boundary lines, for each district that operates a school bus transportation program;
- (b) except as provided in subsection (2), approve, disapprove, or adjust the school bus routes submitted by the trustees of each district in conformity with the transportation service areas established in subsection (1)(a);
- (c) approve, disapprove, or adjust applications, approved by the trustees, for increased reimbursements for individual transportation because of isolated conditions of the eligible transportee's residence;
- (d) conduct hearings to establish the facts of transportation controversies that have been appealed from the decision of the trustees and act on the appeals on the basis of the facts established at the hearing; and
- (e) determine if geographic conditions make it impractical for a child to attend school in the district of residence, in accordance with 20-5-321(1)(b).

(2) In an emergency situation, a temporary bus route change may be approved by the county superintendent. A bus route change approved by the county superintendent must be confirmed by the county transportation committee within 30 days in order to be continued for a period longer than 30 days.

(3) When the county transportation committee reviews a request for a new bus route or a change to an existing route, the committee shall consider the following:

- (a) a map of the existing and proposed bus route;
- (b) a description of turnarounds;
- (c) conditions affecting safety;
- (d) the total mileage and change in mileage of the affected bus route;
- (e) the approximate total cost;
- (f) reasons for the proposed bus route change;
- (g) the number of children to be served;

(h) a copy of the official minutes of the meeting at which the school trustees approved the new bus route or route change; and

(i) any other information that the county transportation committee considers relevant.

(4) When an application for increased reimbursement for individual transportation is presented to the county transportation committee, it must include a signed individual transportation contract and a copy of the official minutes of the meeting at which the trustees acted upon the request for increased reimbursement.

(5) After a factfinding hearing and decision on a transportation controversy, the trustees or a patron of the district may appeal the decision to the superintendent of public instruction who shall issue a decision on the basis of the facts established at the county transportation committee hearing.

History: En. 75-7015 by Sec. 292, Ch. 5, L. 1971; R.C.M. 1947, 75-7015; amd. Sec. 4, Ch. 298, L. 1995; amd. Sec. 8, Ch. 464, L. 2001.

Cross-References

School fiscal year, 20-1-301.

20-10-133 through 20-10-140 reserved.

20-10-141. Schedule of maximum reimbursement by mileage rates. (1) The mileage rates in subsection (2) for school transportation constitute the maximum reimbursement to districts for school transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates may not limit the amount that a district may budget in its transportation fund budget in order to provide for the estimated and necessary cost of school transportation during the ensuing school fiscal year. All bus miles traveled on bus routes approved by the county transportation committee are reimbursable. Nonbus mileage is reimbursable for a vehicle driven by a bus driver to and from an overnight location of a school bus when the location is more than 10 miles from the school. A district may approve additional bus or nonbus miles within its own district or approved service area but may not claim reimbursement for the mileage. Any vehicle, the operation of which is reimbursed for bus mileage under the rate provisions of this schedule, must be a school bus, as defined by this title, driven by a qualified driver on a bus route approved by the county transportation committee and the superintendent of public instruction.

(2) (a) The rate for each bus mile traveled must be determined in accordance with the following schedule:

(i) 95 cents for a school bus with a rated capacity of not more than 49 passenger seating positions;

(ii) \$1.15 for a school bus with a rated capacity of 50 to 59 passenger seating positions;

(iii) \$1.36 for a school bus with a rated capacity of 60 to 69 passenger seating positions;

(iv) \$1.57 for a school bus with a rated capacity of 70 to 79 passenger seating positions; and

(v) \$1.80 for a school bus with 80 or more passenger seating positions.

(b) Nonbus mileage, as provided in subsection (1), must be reimbursed at a rate of 50 cents a mile.

(3) The rated capacity is the number of passenger seating positions of a school bus as determined under the policy adopted by the board of public education. If modification of a school bus to accommodate pupils with disabilities reduces the rated capacity of the bus, the reimbursement to a district for pupil transportation is based on the rated capacity of the bus prior to modification.

(4) The number of pupils riding the school bus may not exceed the passenger seating positions of the bus.

History: En. 75-7018 by Sec. 295, Ch. 5, L. 1971; amd. Sec. 1, Ch. 469, L. 1975; amd. Sec. 22, Ch. 266, L. 1977; amd. Sec. 1, Ch. 529, L. 1977; R.C.M. 1947, 75-7018; amd. Sec. 1, Ch. 590, L. 1979; amd. Sec. 1, Ch. 454, L. 1981; amd. Sec. 1, Ch. 515, L. 1983; amd. Sec. 1, Ch. 559, L. 1983; amd. Sec. 1, Ch. 344, L. 1985; amd. Sec. 10, Ch. 711, L. 1991; amd. Sec. 6, Ch. 298, L. 1995; amd. Sec. 10, Ch. 550, L. 2003.

Cross-References

School fiscal year, 20-1-301.

Emergency budget for transportation fund, 20-9-162, 20-9-165.

Transportation fund as budgeted fund, 20-9-201.

20-10-142. Schedule of maximum reimbursement for individual transportation.

The following rates for individual transportation constitute the maximum reimbursement to districts for individual transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates constitute the limitation of the budgeted amounts for individual transportation for the ensuing school fiscal year. The schedules provided in this section may not be altered by any authority other than the legislature. When the trustees contract with the parent or guardian of any eligible transportee to provide individual transportation for each day of school attendance, they shall reimburse the parent or guardian for actual miles transported on the basis of the following schedule:

(1) When a parent or guardian transports an eligible transportee or transportees from the residence of the parent or guardian to a school or to schools located within 3 miles of one another, the total reimbursement for each day of attendance is determined by multiplying the distance in miles between the residence and the school, or the most distant school if more than one, by 2, subtracting 6 miles from the product, and multiplying the difference by 35 cents, provided that:

(a) if two or more eligible transportees are transported by a parent or guardian to two or more schools located within 3 miles of one another and if the schools are operated by different school districts, the total amount of the reimbursement must be divided equally between the districts;

(b) if two or more eligible transportees are transported by a parent or guardian to two or more schools located more than 3 miles from one another, the parent or guardian must be separately reimbursed for transporting the eligible transportee or transportees to each school;

(c) if a parent transports two or more eligible transportees to a school and a bus stop that are located within 3 miles of one another, the total reimbursement must be determined under the provisions of this subsection (1) and must be divided equally between the district operating the school and the district operating the bus;

(d) if a parent transporting two or more eligible transportees to a school or bus stop must, because of varying arrival and departure times, make more than one round-trip journey to the bus stop or school, the total reimbursement allowed by this section is limited to one round trip a day for each scheduled arrival or departure time;

(e) notwithstanding subsection (1)(a), (1)(b), (1)(c), or (1)(d), a reimbursement may not be less than 35 cents a day.

(2) When the parent or guardian transports an eligible transportee or transportees from the residence to a bus stop of a bus route approved by the trustees for the transportation of the transportee or transportees, the total reimbursement for each day of attendance is determined by multiplying the distance in miles between the residence and the bus stop by 2, subtracting 6 miles from the product, and multiplying the difference by 35 cents, provided that:

(a) if the eligible transportees attend schools in different districts but ride on one bus, the districts shall divide the total reimbursement equally; and

(b) if the parent or guardian is required to transport the eligible transportees to more than one bus, the parent or guardian must be separately reimbursed for transportation to each bus.

(3) When, because of excessive distances, impassable roads, or other special circumstances of isolation, the rates prescribed in subsection (1) or (2) would be an inadequate reimbursement for the transportation costs or would result in a physical hardship for the eligible transportee, a parent or guardian may request an increase in the reimbursement rate. A request for increased rates because of isolation must be made by the parent or guardian on the contract for individual transportation for the ensuing school fiscal year by indicating the special facts and circumstances that exist to justify the increase. Before an increased rate because of isolation may be paid to the requesting parent or guardian, the rate must be approved by the county transportation committee and the superintendent of public instruction after the trustees have indicated their approval or disapproval. Regardless of the action of the trustees and when approval is given by the committee and the superintendent of public instruction, the trustees shall pay the increased rate because of isolation. The increased rate is $1\frac{1}{2}$ times the rate prescribed in subsection (1).

(4) The state and county transportation reimbursement for an individual transportation contract may not exceed \$12.95 for each day of attendance for the first eligible transportee and \$8.40 for each day of attendance for each additional eligible transportee.

(5) When the isolated conditions of the household where an eligible transportee resides require an eligible transportee to live away from the household in order to attend school, the eligible transportee is eligible for the room and board reimbursement. Approval to receive the room and board reimbursement must be obtained in the same manner prescribed in subsection (3). The per diem rate for room and board is \$12.95 for one eligible transportee and \$8.40 for each additional eligible transportee of the same household.

(6) When the individual transportation provision is to be satisfied by supervised home study or supervised correspondence study, the reimbursement rate is the cost of the study, provided that the course of instruction is approved by the trustees and supervised by the district.

History: En. 75-7019 by Sec. 296, Ch. 5, L. 1971; amd. Sec. 1, Ch. 169, L. 1973; amd. Sec. 3, Ch. 416, L. 1973; amd. Sec. 1, Ch. 470, L. 1975; amd. Sec. 1, Ch. 534, L. 1977; R.C.M. 1947, 75-7019; amd. Sec. 2, Ch. 590, L. 1979; amd. Sec. 2, Ch. 454, L. 1981; amd. Sec. 11, Ch. 711, L. 1991; amd. Sec. 2, Ch. 359, L. 1993; amd. Sec. 7, Ch. 298, L. 1995; amd. Sec. 2, Ch. 409, L. 2001; amd. Sec. 11, Ch. 4, Sp. L. December 2005.

Compiler's Comments

2005 Special Session Amendment: Chapter 4 in (1), (1)(e), and (2) increased rate from 25 cents to 35 cents; and in (4) and in third sentence in (5) increased contract amount from \$9.25 to \$12.95 for first eligible transportee and from \$6 to \$8.40 for additional transportees. Amendment effective July 1, 2006.

Effective Date — Applicability: Section 15, Ch. 4, Sp. L. December 2005, provided: "[This act] is effective July 1, 2006, and applies to school budgets for school fiscal years beginning on or after July 1, 2006."

Cross-References

Supervised correspondence or home study as exception to compulsory enrollment, 20-5-102.

Supervised correspondence study, 20-7-116.

20-10-143. Budgeting for transportation and transmittal of transportation contracts. (1) The trustees of a district furnishing transportation to pupils who are residents of the district shall provide a transportation fund budget that is adequate to finance the district's transportation contractual obligations and any other transportation expenditures necessary for the conduct of its transportation program. The transportation fund budget must include:

(a) an adequate amount to finance the maintenance and operation of school buses owned and operated by the district;

(b) the annual contracted amount for the maintenance and operation of school buses by a private party;

(c) the annual contracted amount for individual transportation, including any increased amount because of isolation, which may not exceed the schedule amounts prescribed in 20-10-142;

(d) any amount necessary for the purchase, rental, or insurance of school buses; and

(e) any other amount necessary to finance the administration, operation, or maintenance of the transportation program of the district, as determined by the trustees.

(2) The trustees may include a contingency amount in the transportation fund budget for the purpose of enabling the district to fulfill an obligation to provide transportation in accordance with this title for:

(a) pupils not residing in the district at the time of the adoption of the final budget and who subsequently became residents of the district during the school fiscal year;

(b) pupils who have become eligible transportees since the adoption of the final budget because their legal residence has been changed; or

(c) other unforeseen increases in bus route mileage or obligations for payment of additional contracts for individual transportation for an eligible transportee for which state and county reimbursement is authorized under 20-10-141 and 20-10-142. The budgeted contingency amount may not exceed 10% of the transportation schedule amount as calculated under the provisions of 20-10-141 and 20-10-142 for all transportation services authorized by the schedules and provided by the district unless 10% of the transportation schedule amount is less than \$100, in which case \$100 is the maximum limitation for the budgeted contingency amount.

(3) A budget amendment to the transportation fund budget may be adopted subject to the provisions of 20-9-161 through 20-9-166.

(4) The trustees shall report the transportation fund budget on the regular budget form prescribed by the superintendent of public instruction in accordance with 20-9-103, and the adoption of the transportation fund budget must be completed in accordance with the school budgeting laws. When the adopted final budget is sent to the county superintendent, the trustees shall also send copies of all completed transportation contracts for school bus transportation to the county superintendent. The contracts must substantiate all contracted school bus transportation services incorporated in the final budget.

History: En. 75-7020 by Sec. 297, Ch. 5, L. 1971; R.C.M. 1947, 75-7020; amd. Sec. 12, Ch. 711, L. 1991; amd. Sec. 44, Ch. 767, L. 1991; amd. Sec. 12, Ch. 211, L. 1997; amd. Sec. 14, Ch. 343, L. 1999.

Cross-References

Transportation fund as budgeted fund, 20-9-201.

20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget. Before the second Monday of August, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate for each bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by the district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted in the budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or \$100, whichever is larger, the contingency amount on the budget must be reduced to the limitation amount and used in this determination of the schedule amount; plus

(e) any estimated costs for transporting a child out of district when the child has mandatory approval to attend school in a district outside the district of residence.

(2) (a) The schedule amount determined in subsection (1) or the total transportation fund budget, whichever is smaller, is divided by 2 and is used to determine the available state and county revenue to be budgeted on the following basis:

(i) one-half is the budgeted state transportation reimbursement; and

(ii) one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.

(b) When the district has a sufficient amount of fund balance for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and fund balance reappropriated must be used to reduce the county financing obligation in subsection (2)(a)(ii) and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).

(c) The county revenue requirement for a joint district, after the application of any district money under subsection (2)(b), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of 20 U.S.C. 7701, et seq., or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transportation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for a child;

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4);

(e) anticipated revenue from coal gross proceeds under 15-23-703;

(f) anticipated oil and natural gas production taxes;

(g) anticipated local government severance tax payments for calendar year 1995 production;

(h) anticipated transportation payments for out-of-district pupils under the provisions of 20-5-320 through 20-5-324;

(i) school district block grants distributed under 20-9-630;

(j) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

(k) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the transportation fund levy requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142.

History: En. 75-7021 by Sec. 298, Ch. 5, L. 1971; R.C.M. 1947, 75-7021; amd. Sec. 6, Ch. 699, L. 1983; amd. Sec. 17, Ch. 695, L. 1985; amd. Sec. 20, Ch. 611, L. 1987; amd. Sec. 24, Ch. 655, L. 1987; amd. Sec. 7, Ch. 35, L. 1989; amd. Sec. 87, Ch. 11, Sp. L. June 1989; amd. Sec. 11, Ch. 267, L. 1991; amd. Sec. 13, Ch. 711, L. 1991; amd. Sec. 45, Ch. 767, L. 1991; amd. Sec. 2, Ch. 9, Sp. L. July 1992; amd. Sec. 12, Ch. 133, L. 1993; amd. Sec. 17, Ch. 563, L. 1993; amd. Sec. 19, Ch. 9, Sp. L. November 1993; amd. Sec. 45, Ch. 451, L. 1995; amd. Sec. 7, Ch. 580, L. 1995; amd. Sec. 32, Ch. 22, L. 1997; amd. Sec. 13, Ch. 211, L. 1997; amd. Sec. 14, Ch. 496, L. 1997; amd. Sec. 19, Ch. 515, L. 1999; amd. Sec. 122, Ch. 574, L. 2001; amd. Sec. 29, Ch. 130, L. 2005; amd. Sec. 9, Ch. 255, L. 2005.

Cross-References

Property tax levies, Title 15, ch. 10.

Supervised correspondence study, 20-7-116.

20-10-145. State transportation reimbursement. (1) A district providing school bus transportation or individual transportation in accordance with this title, board of public education transportation policy, and superintendent of public instruction transportation rules must receive a state reimbursement of its transportation expenditures under the transportation reimbursement rate provisions of 20-10-141 and 20-10-142. The state transportation reimbursement is one-half of the reimbursement amounts established in 20-10-141 and 20-10-142 or one-half of the district's transportation fund budget, whichever is smaller, and must be computed on the basis of the number of days the transportation services were actually rendered, not to exceed 180 pupil-instruction days. In determining the amount of the state transportation reimbursement, an amount claimed by a district may not be considered for reimbursement unless the amount has been paid in the regular manner provided for the payment of other financial obligations of the district.

(2) Requests for the state transportation reimbursement must be made by each district semiannually during the school fiscal year on the claim forms and procedure promulgated by the superintendent of public instruction. The claims for state transportation reimbursements must be routed by the district to the county superintendent, who after reviewing the claims shall send them to the superintendent of public instruction. The superintendent of public instruction shall establish the validity and accuracy of the claims for the state transportation reimbursements by

determining compliance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction. After making any necessary adjustments to the claims, the superintendent of public instruction shall order a disbursement from the state money appropriated by the legislature of the state of Montana for the state transportation reimbursement. The payment of all the district's claims within one county must be made to the county treasurer of the county, and the county superintendent shall apportion the payment in accordance with the apportionment order supplied by the superintendent of public instruction.

(3) After adopting a budget amendment for the transportation fund in accordance with 20-9-161 through 20-9-166, the district shall send to the superintendent of public instruction a copy of each new or amended individual transportation contract and each new or amended bus route form to which the budget amendment applies. State reimbursement for the additional obligations must be paid as provided in subsection (1).

History: En. 75-7022 by Sec. 299, Ch. 5, L. 1971; R.C.M. 1947, 75-7022; amd. Sec. 14, Ch. 711, L. 1991; amd. Sec. 46, Ch. 767, L. 1991; amd. Sec. 15, Ch. 343, L. 1999.

Cross-References

School fiscal year, 20-1-301.

20-10-146. County transportation reimbursement. (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction must be the same as the state transportation reimbursement payment, except that:

(a) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(b), the annual apportionment is limited to the budget amount;

(b) when the county transportation reimbursement for a school bus has been prorated between two or more counties because the school bus is conveying pupils of more than one district located in the counties, the apportionment of the county transportation reimbursement must be adjusted to pay the amount computed under the proration; and

(c) when county transportation reimbursement is required under the mandatory attendance agreement provisions of 20-5-321.

(2) The county transportation net levy requirement for the financing of the county transportation fund reimbursements to districts is computed by:

(a) totaling the net requirement for all districts of the county, including reimbursements to a special education cooperative or prorated reimbursements to joint districts or reimbursements under the mandatory attendance agreement provisions of 20-5-321;

(b) determining the sum of the money available to reduce the county transportation net levy requirement by adding:

(i) anticipated money that may be realized in the county transportation fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) anticipated local government severance tax payments for calendar year 1995 production;

(iv) coal gross proceeds taxes under 15-23-703;

(v) countywide school transportation block grants distributed under 20-9-632;

(vi) any fund balance available for reappropriation from the end-of-the-year fund balance in the county transportation fund;

(vii) federal forest reserve funds allocated under the provisions of 17-3-213; and

(viii) other revenue anticipated that may be realized in the county transportation fund during the ensuing school fiscal year; and

(c) subtracting the money available, as determined in subsection (2)(b), to reduce the levy requirement from the county transportation net levy requirement.

(3) The net levy requirement determined in subsection (2)(c) must be reported to the county commissioners on the fourth Monday of August by the county superintendent, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements to the superintendent of public instruction not later than the second Monday in September. The report must be completed on forms supplied by the superintendent of public instruction.

(5) The county superintendent shall apportion the county transportation reimbursement from the proceeds of the county transportation fund. The county superintendent shall order the county treasurer to make the apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments.

History: En. 75-7023 by Sec. 300, Ch. 5, L. 1971; R.C.M. 1947, 75-7023; amd. Sec. 15, Ch. 711, L. 1991; amd. Sec. 40, Ch. 10, L. 1993; amd. Sec. 13, Ch. 133, L. 1993; amd. Sec. 3, Ch. 359, L. 1993; amd. Sec. 18, Ch. 563, L. 1993; amd. Sec. 46, Ch. 451, L. 1995; amd. Sec. 8, Ch. 580, L. 1995; amd. Sec. 15, Ch. 496, L. 1997; amd. Sec. 20, Ch. 515, L. 1999; amd. Sec. 123, Ch. 574, L. 2001; amd. Sec. 4, Ch. 276, L. 2003; amd. Sec. 30, Ch. 130, L. 2005.

20-10-147. Bus depreciation reserve fund. (1) The trustees of a district owning a bus or a two-way radio used for purposes of transportation, as defined in 20-10-101, or for purposes of conveying pupils to and from school functions or activities may establish a bus depreciation reserve fund to be used for the conversion, remodeling, or rebuilding of a bus or for the replacement of a bus or radio. The trustees of a district may also use the bus depreciation reserve fund to purchase an additional bus for purposes of transportation, as defined in 20-10-101.

(2) Whenever a bus depreciation reserve fund is established, the trustees may include in the district's budget, in accordance with the school budgeting provisions of this title, an amount each year that does not exceed 20% of the original cost of a bus or a two-way radio. The amount budgeted may not, over time, exceed 150% of the original cost of a bus or two-way radio. The annual revenue requirement for each district's bus depreciation reserve fund, determined within the limitations of this section, must be reported by the county superintendent to the county commissioners on the fourth Monday of August as the bus depreciation reserve fund levy requirement for that district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(3) Any expenditure of bus depreciation reserve fund money must be within the limitations of the district's final bus depreciation reserve fund budget and the school financial administration provisions of this title and may be made only to convert, remodel, or rebuild buses, to replace the buses or radios, or for the purchase of an additional bus as provided in subsection (1), for which the bus depreciation reserve fund was created.

(4) Whenever the trustees of a district maintaining a bus depreciation reserve fund sell all of the district's buses and consider it to be in the best interest of the district to transfer any portion or all of the bus depreciation reserve fund balance to any other fund maintained by the district, the trustees shall submit the proposition to the electors of the district. The electors qualified to vote at the election shall qualify under 20-20-301, and the election must be called and conducted in the manner prescribed by this title for school elections. If a majority of those electors voting at the election approve the proposed transfer from the bus depreciation reserve fund, the transfer is approved and the trustees shall immediately order the county treasurer to make the approved transfer.

History: En. 75-7024 by Sec. 301, Ch. 5, L. 1971; amd. Sec. 1, Ch. 194, L. 1977; R.C.M. 1947, 75-7024; amd. Sec. 1, Ch. 69, L. 1991; amd. Sec. 11, Ch. 568, L. 1991; amd. Sec. 14, Ch. 133, L. 1993; amd. Sec. 1, Ch. 238, L. 1997; amd. Sec. 1, Ch. 157, L. 1999; amd. Sec. 115, Ch. 584, L. 1999; amd. Sec. 4, Ch. 220, L. 2001.

Cross-References

Administration of finances, Title 20, ch. 9, part 2.
School elections, Title 20, ch. 20.

Part 2 Food Services

Part Cross-References

School food services defined, 20-1-101.
Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31.
Wild animal meat to be donated to school lunch program, 87-1-226.

20-10-201. Acceptance, expenditure, and administration of federal school food services money. (1) The superintendent of public instruction is authorized to accept and direct the disbursement of funds appropriated by act of congress and apportioned to the state for use in

financing school food services. This authorization applies to federal funds available for school food services under the National School Lunch Act (Public Law 396, 79th congress, chapter 281, 2nd session), Child Nutrition Act of 1966 (Public Law 642, 89th Congress), any amendments to these public laws, and any other public laws enacted to provide assistance for school food services.

(2) The superintendent of public instruction shall deposit all federal funds for school food services with the state treasurer who shall credit the funds to the federal special revenue fund. Any disbursement of the federal school food services funds must be directed by the superintendent of public instruction.

(3) The superintendent of public instruction may:

(a) enter into agreements and cooperate with any federal agency, district, or other agency or person, prescribe regulations, employ personnel, and take any other action that the superintendent of public instruction may consider necessary to:

(i) provide for the establishment, operation, and expansion of school food services; and

(ii) disburse federal and state funds according to the requirements of federal and state law;

(b) give technical advice and assistance to any district establishing or operating school food services and assist in the training of personnel for the services;

(c) accept any gift for use in providing school food services;

(d) conduct studies of methods of improving and expanding school food services and appraise the nutritive benefits of school food services.

(4) The superintendent of public instruction shall report annually to the board of public education on the financial, administrative, and operational phases of school food services.

History: En. 75-8002 by Sec. 443, Ch. 5, L. 1971; R.C.M. 1947, 75-8002; amd. Sec. 17, Ch. 281, L. 1983; amd. Sec. 20, Ch. 237, L. 2001.

Cross-References

Miscellaneous programs fund, 20-9-507.

Acceptance and expenditure of federal money for state, 20-9-603.

20-10-202. Records, reports, and reviews. (1) The superintendent of public instruction shall prescribe regulations for keeping the financial and commodity records and making reports on school food services operated by a district. The financial records must be available for inspection and audit by federal and state officials authorized by law or contract to perform audits and be preserved for the period of time, not to exceed 5 years, the superintendent of public instruction may prescribe.

(2) The superintendent of public instruction shall conduct or cause to be conducted the inspections and administrative reviews of the financial records and the operation of school food services.

History: En. 75-8003 by Sec. 444, Ch. 5, L. 1971; R.C.M. 1947, 75-8003; amd. Sec. 26, Ch. 489, L. 1991.

Cross-References

Audits of political subdivisions, Title 2, ch. 7, part 5.

20-10-203. School food commodities. The superintendent of public instruction is authorized to accept food commodities from the federal government and to distribute the food commodities to any district or nonpublic school that contracts for such distribution. The superintendent of public instruction may use for the shipping, handling, and other related costs of distributing the food commodities any funds advanced by legislative appropriation for the commodity state special revenue account. Such distribution costs shall be reimbursed by the participating districts and nonpublic schools. Those reimbursements shall be returned to the fund from which payments for the distribution costs were made.

History: En. 75-8004 by Sec. 445, Ch. 5, L. 1971; R.C.M. 1947, 75-8004; amd. Sec. 18, Ch. 281, L. 1983.

Cross-References

Power of districts to accept gifts, 20-6-601.

Duty of trustees to execute all contracts, 20-9-213.

20-10-204. Duties of trustees. (1) The trustees of any district offering school food services may:

(a) enter into contracts with the superintendent of public instruction for the purpose of obtaining funds, supplies and equipment, food commodities, and facilities necessary for the establishment, operation, and maintenance of the school food services;

(b) sell food to the pupils and adults participating in the school food services in accordance with the policies of the superintendent of public instruction;

(c) accept any gift for use of the school food services;

(d) allocate federal funds received in lieu of property taxation to the school food services fund in accordance with the provisions of 20-10-205; and

(e) adopt such policies for the operation of school food services as are consistent with the regulations of the superintendent of public instruction and with the laws of Montana.

(2) When the trustees of any district offer school food services, they shall establish a school food services fund for the deposit of proceeds from the sale of food, gifts, and other moneys specified in this section and for the expenditure of such moneys in support of the school food services.

History: En. 75-8005 by Sec. 446, Ch. 5, L. 1971; R.C.M. 1947, 75-8005.

Cross-References

Powers and duties of trustees generally, 20-3-324.

Power of districts to accept gifts, 20-6-601.

Conflicts of interests, letting contracts, and calling for bids, 20-9-204.

Duty of trustees to execute all contracts, 20-9-213.

20-10-205. Allocation of federal funds to school food services fund for federally connected, indigent pupils. The trustees of any school district receiving federal reimbursement in lieu of taxes may request the allocation of a portion of those federal funds to the school food services fund to provide free meals for federally connected, indigent pupils when the pupils are declared eligible. In granting the request, the county superintendent shall comply with the following procedures:

(1) The indigency must be certified by the local office of public assistance, assisted by a committee of three composed of the county superintendent, a representative of the county health department, and an authorized representative of the district.

(2) A certified, detailed claim for the amount of the federal reimbursement in lieu of taxes that is to be allocated to the school food services fund must be filed by the district with the county superintendent. The county superintendent shall confirm or adjust the amount of the claim by:

(a) determining that the pupils included on the claim have been declared indigent under subsection (1);

(b) determining the number of meals provided the indigent pupils by the school food services;

(c) determining the price for each meal that is charged to the nonindigent pupil; and

(d) multiplying the number of meals provided to indigent pupils by the price for each meal.

(3) After the county superintendent's confirmation or adjustment of the claim, the county superintendent shall notify the district and the county treasurer of the approved amounts for allocation to the school food services fund. The district shall deposit the approved amount in the school food services fund on receipt of the succeeding federal payment in lieu of taxes.

History: En. 75-8006 by Sec. 447, Ch. 5, L. 1971; R.C.M. 1947, 75-8006; amd. Sec. 63, Ch. 114, L. 2003.

Cross-References

Allocation of federal funds in lieu of property taxes, 20-9-143.

20-10-206. Pupils in state institutional schools included. The provisions of 20-10-201 through 20-10-205 shall apply to pupils in state institutional schools meeting the requirements established by the superintendent of public instruction and the applicable federal laws and regulations.

History: En. Sec. 1, Ch. 92, L. 1973; R.C.M. 1947, 75-8007.

20-10-207. School food services fund. The trustees of any district offering school food services shall establish a school food services fund under the provisions of 20-10-204. Such fund shall be a nonbudgeted fund and shall be financially administered under the provisions of this title for a nonbudgeted fund.

History: En. 75-7211 by Sec. 350, Ch. 5, L. 1971; R.C.M. 1947, 75-7211.

Cross-References

Nonbudgeted fund defined, 20-9-201.

20-10-208. Terminated. Sec. 4, Ch. 437, L. 2001.

History: En. Sec. 1, Ch. 437, L. 2001.

CHAPTER 15 COMMUNITY COLLEGE DISTRICTS

Part 1 — General Provisions

- 20-15-101. Definition.
- 20-15-102. Community college districts — name and corporate powers.
- 20-15-103. Supervision and coordination by board of regents.
- 20-15-104. Pecuniary interest and letting contracts.
- 20-15-105. Courses of instruction — tuition and fees.
- 20-15-106. Retirement systems for employees and teachers.
- 20-15-107. Lease or sale of district property.
- 20-15-108. Baccalaureate degrees not to be granted.
- 20-15-109. Acceptance of donations.

Part 2 — Organization and Trustees

- 20-15-201. Requirements for organization of community college district.
- 20-15-202. Petition for organization of community college district.
- 20-15-203. Call of community college district organization election — proposition statement.
- 20-15-204. Election of trustees — districts from which elected — terms of office.
- 20-15-205. Call for nominations of trustee candidates and notice.
- 20-15-206. Nomination of candidates and provision of sample ballot.
- 20-15-207. Notice of organization election.
- 20-15-208. Conduct of election.
- 20-15-209. Determination of approval or disapproval of proposition — subsequent procedures if approved.
- 20-15-210. Qualification and organization of board of trustees.
- 20-15-211 through 20-15-218 reserved.
- 20-15-219. Qualifications for office of trustee — nominating petitions.
- 20-15-220. Trustee election ballot.
- 20-15-221. Election of trustees after organization of community college district.
- 20-15-222. Results of election — qualifying oath — term of office.
- 20-15-223. Vacancies.
- 20-15-224. Board of trustees — organization, meetings, quorum, mileage, and seal.
- 20-15-225. Powers and duties of trustees.
- 20-15-226. Personal liability of trustees.
- 20-15-227. Trustee removal procedure.
- 20-15-228. Grounds for removal.
- 20-15-229. Audit of district.
- 20-15-230 reserved.
- 20-15-231. Annexation of territory of districts to community college district.
- 20-15-232 through 20-15-240 reserved.
- 20-15-241. Community college service regions — creation.

Part 3 — Finance

- 20-15-301. Sources of financing for and types of capital expenditures.
- 20-15-302. Repealed.
- 20-15-303. Repealed.
- 20-15-304. Federal and state aid.
- 20-15-305. Adult education tax levy.
- 20-15-306. Repealed.
- 20-15-307. Repealed.
- 20-15-308. Deposit of moneys.
- 20-15-309. Proposed budget.
- 20-15-310. Appropriation — definitions.
- 20-15-311. Funding sources.
- 20-15-312. Calculation and approval of operating budget.
- 20-15-313. Tax levy.
- 20-15-314. Tax levy for community college service region.
- 20-15-315 through 20-15-320 reserved.
- 20-15-321. General fund cash reserve.
- 20-15-322 reserved.
- 20-15-323. Definition of emergency for budgeting purposes.
- 20-15-324. Resolution for emergency budget — petition to board of regents.
- 20-15-325. Emergency budget limitation, preparation, and adoption procedures.
- 20-15-326. Determination of available financing — fixing and levying property taxation for emergency budget.

Part 4 — Relationship to Other Laws

- 20-15-401. Purpose.
- 20-15-402. Precedence of community college chapter.

20-15-403. Applications of other school district provisions.

20-15-404. Trustees to adhere to certain other laws.

Part 1 General Provisions

20-15-101. Definition. As used in this title, unless the context clearly indicates otherwise, the term “community college district” means a body corporate and a subdivision of the state of Montana organized under a single board of trustees for the purpose of providing community college instruction to high school graduates and other persons who have terminated their formal high school education. Community college districts shall be in addition to any other districts existing in any portion of the area encompassed by the community college district.

History: En. 75-8101 by Sec. 448, Ch. 5, L. 1971; R.C.M. 1947, 75-8101.

20-15-102. Community college districts — name and corporate powers. A community college district shall be known as “Community College District of . . . , Montana”. In this name, the community college district may sue and be sued, levy and collect taxes within the limitations of the laws of Montana, and possess the same corporate powers as districts in this state, except as otherwise provided by law.

History: En. 75-8102 by Sec. 449, Ch. 5, L. 1971; R.C.M. 1947, 75-8102.

Cross-References

Claims and actions against political subdivisions, Title 2, ch. 9, part 3.

20-15-103. Supervision and coordination by board of regents. Community college districts shall be under the supervision and coordination of the regents. The regents shall:

- (1) supervise community college districts in accordance with the provisions of this section and 20-15-105;
- (2) appoint a coordinator of community college districts and prescribe the duties of the coordinator;
- (3) formulate and put into effect general policies for the supervision and coordination of community college districts;
- (4) after consultation with the community college trustees, develop and implement policies that distinguish the regents’ authority to supervise and coordinate and the trustees’ authority to administer and control community colleges; and
- (5) call an election, determine the results of the election, and order and implement the organization of a community college district in accordance with this chapter.

History: (1), (5)En. 75-5607.1 by Sec. 2, Ch. 266, L. 1977; Sec. 75-5607.1, R.C.M. 1947; (2)En. Sec. 450, Ch. 5, L. 1971; amd. Sec. 1, Ch. 406, L. 1971; Sec. 75-8103, R.C.M. 1947; R.C.M. 1947, 75-5607.1, 75-8103; (3), (4)En. Sec. 25, Ch. 392, L. 1979.

Cross-References

Board of Regents established, Art. X, sec. 9, Mont. Const.; 2-15-1505.

Powers and duties of Board of Regents generally, 20-25-301.

20-15-104. Pecuniary interest and letting contracts. (1) It is unlawful for any community college district trustee to:

- (a) have a pecuniary interest, either directly or indirectly, in the erection of any community college building in the trustee’s district;
- (b) have a pecuniary interest, either directly or indirectly, in furnishing or repairing a community college building;
- (c) be in any manner connected with the furnishing of supplies for the maintenance of the college; or
- (d) receive or accept any compensation or reward for services rendered as trustee, except as provided in this section.

(2) Except for the letting of an investment grade energy audit or energy performance contract pursuant to Title 90, chapter 4, part 11, including construction or installation of conservation measures pursuant to an energy performance contract, the board of trustees shall let contracts for building, furnishing, repairing, or other work or supplies for the benefit of the district according to the following rules and procedures:

(a) The board of trustees need not meet requirements relating to advertising or bidding if a proposed contract for building, furnishing, repairing or other work or supplies is for less than \$5,000.

(b) Whenever the proposed contract costs are less than \$25,000 but more than \$5,000, the board of trustees shall procure at least three informal bids, if reasonably available, from contractors licensed in Montana.

(c) Whenever the proposed contract costs are more than \$25,000, the board of trustees shall solicit formal bids and advertise once each week for at least 2 weeks in a newspaper published in each county in which the area of the district lies, calling for bids to perform the work or furnish the supplies. If advertising is required, the board shall award the contract to the lowest responsible bidder. However, the board of trustees has the right to reject any bids.

History: En. 75-8118 by Sec. 465, Ch. 5, L. 1971; R.C.M. 1947, 75-8118; amd. Sec. 26, Ch. 392, L. 1979; amd. Sec. 11, Ch. 162, L. 2005.

Cross-References

Code of ethics, Title 2, ch. 2, part 1.

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

Penalty for violation of school laws, 20-1-207.

20-15-105. Courses of instruction — tuition and fees. (1) A community college district shall provide instruction in academic, occupational, and adult education, subject to the approval of the board of regents of higher education. The board of trustees of such district may, in their discretion and upon approval of the board of regents, prescribe:

(a) tuition rates for in-district students, out-of-district students who are residents of the state of Montana, and students who are not residents of the state of Montana;

(b) matriculation charges; and

(c) incidental fees, including building fees, for students in the community college.

(2) In addition thereto, such board of trustees may prescribe such other fees as it considers necessary to maintain courses, taking into consideration such other funds as may be available under law for the support of such courses.

History: En. 75-8119 by Sec. 466, Ch. 5, L. 1971; amd. Sec. 8, Ch. 406, L. 1971; amd. Sec. 4, Ch. 121, L. 1977; R.C.M. 1947, 75-8119.

Cross-References

Vocational education, Title 20, ch. 7, part 3.

Adult education, Title 20, ch. 7, part 7.

Charges for tuition — waivers, 20-25-421.

Capacity of minors to borrow for education, 41-1-303.

20-15-106. Retirement systems for employees and teachers. (1) Teachers of a community college district are subject to and eligible for the benefits of the Montana teachers' retirement system.

(2) The employees of a community college district not eligible for teachers' retirement system benefits are subject to and eligible for the benefits of the Montana public employees' retirement system.

History: En. 75-8120 by Sec. 467, Ch. 5, L. 1971; R.C.M. 1947, 75-8120; amd. Sec. 27, Ch. 392, L. 1979.

Cross-References

Applicability of public employees' retirement system, 19-3-403.

Teachers' retirement system, Title 19, ch. 20.

20-15-107. Lease or sale of district property. Whenever a district has property that is not required for the use of the district, such property may be leased or sold and conveyed to the community college district. Such lease or sale of property shall be consummated in accordance with the provisions of the law of Montana.

History: En. 75-8124 by Sec. 471, Ch. 5, L. 1971; R.C.M. 1947, 75-8124.

Cross-References

School property, Title 20, ch. 6, part 6.

Trustees to execute all contracts, 20-9-213.

Building fund to be credited when property sold, 20-9-508.

20-15-108. Baccalaureate degrees not to be granted. A community college district shall be prohibited from granting baccalaureate degrees.

History: En. 75-8126 by Sec. 1, Ch. 407, L. 1971; R.C.M. 1947, 75-8126.

Cross-References

Regulation of award of degrees — penalty, 20-25-107.

Authority of Board of Regents to grant diplomas and degrees, 20-25-301.

20-15-109. Acceptance of donations. The board of trustees of a community college district, on behalf of the district, is hereby authorized and empowered to accept gifts, legacies, and devises, subject to the conditions imposed by the deed of the dower or will of the testator or without any conditions imposed.

History: En. 75-8123 by Sec. 470, Ch. 5, L. 1971; R.C.M. 1947, 75-8123.

Part 2 Organization and Trustees

20-15-201. Requirements for organization of community college district. The registered electors in any area of the state of Montana may request an election for the organization of a community college district where the proposed community college district conforms to the following requirements:

(1) The proposed area coincides with the then-existing boundaries of contiguous elementary districts of one or more counties.

(2) The taxable value of the proposed area is at least \$10 million.

(3) There are at least 700 pupils regularly enrolled in public and private high schools located in the proposed area.

History: En. 75-8104 by Sec. 451, Ch. 5, L. 1971; amd. Sec. 47, Ch. 566, L. 1977; R.C.M. 1947, 75-8104.

Cross-References

Elementary districts, Title 20, ch. 6, part 2.

20-15-202. Petition for organization of community college district. When the area of a proposed community college district satisfies the specified requirements, the registered electors of the area may petition the regents to call an election for the organization of a community college district. Such petition shall be signed by at least 20% of the registered electors within each county or a part of a county included in the area of the proposed community college district.

History: En. 75-8105 by Sec. 452, Ch. 5, L. 1971; amd. Sec. 2, Ch. 406, L. 1971; R.C.M. 1947, 75-8105.

Cross-References

Registration of electors, Title 13, ch. 2.

Qualification and registration of electors, Title 20, ch. 20, part 3.

20-15-203. Call of community college district organization election — proposition statement. (1) A petition for the organization of a community college district must be presented to the regents. The regents shall examine the petition to determine if the petition satisfies the petitioning and community college district organizational requirements.

(2) If the regents determine that the petition satisfies the requirements, the regents shall order the elementary districts encompassed by the proposed community college district to conduct an election on the community college district organization proposition. The election must be held on the next regular school election day, except that an election required by a petition received by the regents less than 60 days before the regular school election day must be held at the regular school election in the following school fiscal year.

(3) At the election the proposition must be in substantially the following form:

PROPOSITION

Shall there be organized within the area comprising the School Districts of (elementary districts must be listed by county), State of Montana, a community college district for the offering of 13th- and 14th-year courses, to be known as the Community College District of, Montana, under the provisions of the laws authorizing community college districts in Montana, as requested in the petition filed with the Board of Regents at Helena, Montana, on the day of, 20...?

☐ FOR organization.

☐ AGAINST organization.

History: En. 75-8106 by Sec. 453, Ch. 5, L. 1971; amd. Sec. 3, Ch. 406, L. 1971; R.C.M. 1947, 75-8106; amd. Sec. 56, Ch. 51, L. 1999.

Cross-References

Regular school election day and special school elections, 20-20-105.

20-15-204. Election of trustees — districts from which elected — terms of office. (1)

The regents shall provide for the election of trustees of the proposed community college district at the election held for the approval of its organization. Seven trustees shall be elected at large, except that should there be in such proposed community college district one or more high school districts or part of a high school district within the community college district with more than 43% and not more than 50% of the total population of the proposed district, as determined by the last census, then each such district or part of district shall elect three trustees and the remaining trustees shall be elected at large from the remainder of the proposed community college district. Should any such high school district or such part of a high school district have more than 50% of the population of the proposed district, then four trustees shall be elected from such high school district or such part of high school district and three trustees at large from the remainder of the proposed community college district.

(2) If the trustees are elected at large throughout the entire proposed community college district, the three receiving the greatest number of votes shall be elected for a term of 3 years, the two receiving the next greatest number of votes, for a term of 2 years, and the two receiving the next greatest number of votes, for a term of 1 year. If the trustees are elected in any manner other than at large throughout the entire proposed community college district, then the trustees elected shall determine by lot the three who shall serve for 3 years, the two who shall serve for 2 years, and the two who shall serve for 1 year. Thereafter, all trustees elected shall serve for terms of 3 years each.

History: En. 75-8107 by Sec. 454, Ch. 5, L. 1971; amd. Sec. 4, Ch. 406, L. 1971; amd. Sec. 14, Ch. 137, L. 1973; amd. Sec. 1, Ch. 159, L. 1975; R.C.M. 1947, 75-8107.

20-15-205. Call for nominations of trustee candidates and notice. (1) A call for nominations of trustee candidates for the proposed community college district shall be made by the regents.

(2) Notice of the call for nominations shall be published in at least one newspaper of general circulation in each county or any portion of a county included in the proposed community college district once a week for 3 consecutive weeks, the last insertion to be no less than 5 weeks prior to the date of the election. Such notice shall describe the geographical composition of the board of trustees membership, nomination procedure, and the proposal for the organization of a community college district.

History: En. 75-8108 by Sec. 455, Ch. 5, L. 1971; amd. Sec. 5, Ch. 406, L. 1971; R.C.M. 1947, 75-8108.

20-15-206. Nomination of candidates and provision of sample ballot. (1)

Nominations of candidates for the trustee positions must be filed with the regents at least 30 days prior to the date of the election. Any five qualified electors may file nominations of as many persons as are to be elected to the board of trustees of the proposed community college district from their respective community college trustee election areas.

(2) The regents shall provide the trustees of each district ordered to conduct the community college district organization election with a sample of the ballot for the election of the board of trustees. Such sample ballot shall be reproduced by the trustees in a sufficient number to be used as the trustee election ballot.

History: En. 75-8109 by Sec. 456, Ch. 5, L. 1971; amd. Sec. 6, Ch. 406, L. 1971; R.C.M. 1947, 75-8109.

20-15-207. Notice of organization election. Notice of the community college district organization election and the accompanying election of a board of trustees for the proposed community college district shall be given by the regents, by publication in at least one newspaper of general circulation in each county or any portion of a county included in the proposed community college district, once a week for 3 consecutive weeks, the last insertion to be no more than 1 week prior to the date of the election.

History: En. 75-8110 by Sec. 457, Ch. 5, L. 1971; amd. Sec. 7, Ch. 406, L. 1971; R.C.M. 1947, 75-8110.

20-15-208. Conduct of election. The election for the organization of the community college district and the election of trustees for such community college district shall be

conducted, in accordance with the school election laws, by the trustees of the elementary districts ordered to call such election. The cost of conducting such election shall be borne by the districts.

History: En. 75-8111 by Sec. 458, Ch. 5, L. 1971; R.C.M. 1947, 75-8111.

Cross-References

School elections generally, Title 20, ch. 20.

Election expenses, 20-20-107.

20-15-209. Determination of approval or disapproval of proposition — subsequent procedures if approved. (1) To carry, the proposal to organize the community college district must receive a majority of the total number of votes cast thereon, and the coordinator of community college districts, from the results so certified and attested, shall determine whether the proposal has received the majority of the votes cast thereon for each county within the proposed district and shall certify the results to the regents. Approval for the organization of a new community college district shall be granted at the discretion of the legislature acting upon the recommendation of the regents. Should the certificate of the coordinator of community college districts show that the proposition to organize such community college district has received a majority of the votes cast thereon in each county within the proposed district, the regents may make an order declaring the community college district organized and cause a copy thereof to be recorded in the office of the county clerk and recorder in each county in which a portion of such new district is located. If the proposition carries, the regents also shall determine which candidates have been elected trustees. Should the proposition to organize the community college district fail to receive a majority of the votes cast thereon, no tabulation shall be made to determine the candidates elected trustees.

(2) Within 30 days of the date of the organization order, the regents shall set a date and call an organization meeting for the board of trustees of the community college district and shall notify the duly elected trustees of their membership and of the organization meeting. Such notification shall designate a temporary chairman and secretary for the purposes of organization.

History: En. 75-8112 by Sec. 459, Ch. 5, L. 1971; amd. Sec. 1, Ch. 164, L. 1971; amd. Sec. 2, Ch. 407, L. 1971; R.C.M. 1947, 75-8112.

20-15-210. Qualification and organization of board of trustees. (1) Newly elected members of the board of trustees of the community college district must be qualified by taking the oath of office prescribed by the constitution of Montana. At the organization meeting called by the board of regents, the board of trustees must be organized by the election of a presiding officer and a secretary.

(2) The treasurer of the community college district is the county treasurer of the county in which the community college facilities are located. The duties of the county treasurer are referenced in 20-9-212.

History: En. 75-8113 by Sec. 460, Ch. 5, L. 1971; amd. Sec. 33, Ch. 100, L. 1973; R.C.M. 1947, 75-8113; amd. Sec. 28, Ch. 392, L. 1979; amd. Sec. 8, Ch. 260, L. 1995.

Cross-References

Constitutional oath of office, Art. III, sec. 3, Mont. Const.

Declaration in lieu of oath, 1-6-104.

Oath of office, 20-1-202.

20-15-211 through 20-15-218 reserved.

20-15-219. Qualifications for office of trustee — nominating petitions. (1) Any person who is qualified to vote in a community college district under the provisions of 20-20-301 is eligible for the office of community college trustee.

(2) Any five electors of a community college district qualified under the provisions of 20-20-301 may nominate as many trustee candidates as there are trustee positions subject to election at the ensuing election. A nominating petition containing the signatures of the five electors and the name of each person nominated for candidacy must be submitted to the election clerk designated by the board of trustees no less than 30 days before the regular school election day at which he is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated must also be indicated.

History: En. Sec. 3, Ch. 392, L. 1979.

Cross-References

Regular school election day and special school elections, 20-20-105.

20-15-220. Trustee election ballot. (1) The trustee election ballot must be substantially in the following form:

Official Ballot
Community College Trustee Election
Instructions to Voters

Make an "X" or similar mark in the vacant square before the name of the candidate for whom you wish to vote.

Vote for (indicate number to be elected) for a 3-year term.

☐ List the names of the candidates for the 3-year term with a vacant square in front of each name.

Vote for (indicate number to be elected) for a 2-year term.

☐ List the names of the candidates for the 2-year term with a vacant square in front of each name.

Vote for (indicate number to be elected) for a 1-year term.

☐ List the names of the candidates for the 1-year term with a vacant square in front of each name.

(2) In preparing the ballots, only those portions of the prescribed ballot that are applicable to the election to be conducted need be used. The ballot must also be prepared with blank lines and vacant squares in front of the lines in a sufficient number to allow write-in voting for each trustee position that is subject to election.

History: En. Sec. 4, Ch. 392, L. 1979.

20-15-221. Election of trustees after organization of community college district.

(1) After organization, the registered electors of the community college district qualified to vote under the provisions of 20-20-301 shall annually vote for trustees on the regular school election day provided for in 20-3-304. The election must be conducted in accordance with the election provisions of this title whenever the provisions are made applicable to community college districts. Elections must be conducted by the component elementary school districts within the community college district upon the order of the board of trustees of the community college district. The order must be transmitted to the appropriate trustees not less than 40 days prior to the regular school election day.

(2) Notice of the community college district trustee election must be given by the board of trustees of the community college district by publication in one or more newspapers of general circulation within each county, not less than once a week for 2 consecutive weeks, with the last insertion to be no more than 1 week prior to the date of the election. This notice is in addition to the election notice to be given by the trustees of the component elementary districts under the school election laws.

(3) If trustees are elected other than at large throughout the entire district, then only those qualified voters within the area from which the trustee or trustees are to be elected may cast their ballots for the trustee or trustees from that area. In addition to the nominating petition required by 20-15-219(2), all candidates for the office of trustee shall file their declarations of candidacy with the secretary of the board of trustees of the community college district not less than 30 days prior to the date of election. If an electronic voting system is not used in the component elementary school district or districts that conduct the election, the board of trustees of the community college district shall cause ballots to be printed and distributed for the polling places in the component districts at the expense of the community college district, but in all other respects the elections must be conducted in accordance with the school election laws. All costs incident to election of the community college trustees must be borne by the community college district, including one-half of the compensation of the judges for the school elections. However, if

the election of the community college district trustees is the only election conducted, the community college district shall compensate the district for the total cost of the election.

History: En. 75-8114 by Sec. 461, Ch. 5, L. 1971; amd. Sec. 2, Ch. 121, L. 1977; R.C.M. 1947, 75-8114; amd. Sec. 29, Ch. 392, L. 1979; amd. Sec. 31, Ch. 130, L. 2005.

Cross-References

School elections, Title 20, ch. 20.

Regular school election day and special school elections, 20-20-105.

Election expenses, 20-20-107.

20-15-222. Results of election — qualifying oath — term of office. (1) When the board of trustees of the community college district has received all the certified results of the election from the component elementary districts, the then-qualified members of the board of trustees of such community college district shall tabulate the results so received, shall declare and certify the candidate or candidates receiving the greatest number of votes to be elected to the position or positions to be filled, and shall declare and certify the results of the votes cast on any proposition presented at such election.

(2) (a) No person who receives a certificate of election as a community college trustee may assume the trustee position until he has qualified by taking an oath of office prescribed by the constitution of Montana at the next regularly scheduled meeting of the board of trustees after receipt of the certificate of election.

(b) If the elected person does not qualify in accordance with this requirement, another person must be appointed in a manner provided by 20-15-223 and shall serve until the next regular election.

(3) After a person has qualified for a trustee position, he shall hold such position for the term of the position and until his successor has been elected or appointed and has been qualified.

History: En. 75-8115 by Sec. 462, Ch. 5, L. 1971; R.C.M. 1947, 75-8115; amd. Sec. 5, Ch. 392, L. 1979.

Cross-References

Constitutional oath of office, Art. III, sec. 3, Mont. Const.

Declaration in lieu of oath, 1-6-104.

Oath of office, 20-1-202.

20-15-223. Vacancies. (1) A community college trustee position is vacant whenever the incumbent:

- (a) dies;
- (b) resigns; or
- (c) is removed under the provisions of 20-15-227.

(2) A trustee position is also vacant whenever an elected candidate fails to qualify under the provisions of 20-3-307.

(3) Any vacancy of a trustee position shall be filled by appointment by majority vote of the remaining trustees, and the person appointed shall hold office until the next regular school election day, when a trustee shall be elected for the remainder of the unexpired term.

History: En. 75-8116 by Sec. 463, Ch. 5, L. 1971; R.C.M. 1947, 75-8116; amd. Sec. 30, Ch. 392, L. 1979.

Cross-References

Regular school election day and special school elections, 20-20-105.

20-15-224. Board of trustees — organization, meetings, quorum, mileage, and seal. (1) (a) The trustees of each community college district shall annually organize as a governing board of the community college district at the next regularly scheduled meeting after the regular election day and after the issuance of the election certificate to the newly elected trustees.

(b) In order to organize, the trustees of the community college district shall be given notice by the coordinator of the time and place where the organization meeting will be held, and at such meeting they shall choose one of their members as chairman and as secretary. In addition, the trustees may employ or appoint a competent person who is not a member of the trustees as the clerk of the community college district.

(c) The chairman and secretary of the trustees of the community college district shall serve until the next organization meeting. The chairman shall preside at all meetings of the trustees in accordance with the customary rules of order. He shall perform the duties prescribed by this title and any other duties that normally pertain to such office.

(2) The board of trustees of the community college shall hold monthly meetings within the community college district on such day of the month the trustees may set. The president and secretary of the board or a majority of the board may also call special meetings of the board of trustees at any time and place within the community college district if in their judgment necessity requires it. The secretary of the board shall give each member a 48-hour written notice of all special meetings.

(3) A majority of the board of trustees shall constitute a quorum for the transaction of business, except that no contract shall be let, teacher employed or dismissed, or bill approved unless a majority of the total board membership shall vote in favor of such action.

(4) A member of the board of trustees shall receive mileage as provided for in 2-18-503 for the distance necessarily traveled in going to and returning from the place of the meeting and his place of residence each day that such trip is actually made.

(5) The board shall keep a common seal with which to attest its official acts.

History: En. 75-8117 by Sec. 464, Ch. 5, L. 1971; amd. Sec. 1, Ch. 163, L. 1971; amd. Sec. 3, Ch. 121, L. 1977; R.C.M. 1947, 75-8117; (1)En. Sec. 8, Ch. 392, L. 1979.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Disrupting meeting as disorderly conduct, 45-8-101.

20-15-225. Powers and duties of trustees. (1) The trustees of a community college district shall, subject to supervision by the board of regents:

- (a) have general control and supervision of the community college;
- (b) adopt rules, not inconsistent with the constitution and the laws of the state, for the government and administration of the community college;
- (c) grant certificates and degrees to the graduates of the community college;
- (d) keep a record of their proceedings;
- (e) when not otherwise provided by law, have control of all books, records, buildings, grounds, and other property of the community college;
- (f) receive from the state board of land commissioners; other boards, agencies, or persons; or the government of the United States all funds, income, and other property the community college may be entitled to receive or accept and use and appropriate the property for the specific purpose of the entitlement, grant, or donation;
- (g) have general control of all receipts and disbursements of the community college;
- (h) appoint and dismiss a president and faculty for the community college; appoint and dismiss any other necessary officers, agents, and employees; fix their compensation; and set the terms and conditions of their employment;
- (i) administer the tuition provision and otherwise govern the students of the community college district in accordance with the provisions of this chapter;
- (j) call and conduct the elections of the district in accordance with the school election chapter of this title;
- (k) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of this title;
- (l) establish employee benefits, other than retirement benefits, and fix their limits in accordance with 2-18-701 through 2-18-704; and
- (m) participate in district boundary change actions in accordance with the provisions of the district organization chapter of this title.

(2) The trustees of a community college district shall hold in trust all real and personal property of the district for the benefit of the college and students.

(3) The trustees of a community college district may enter into agreements with the western interstate commission for higher education, or similar intrastate, interstate, or international agreements, for the benefit of the district and students.

History: En. 75-8117.1 by Sec. 5, Ch. 121, L. 1977; R.C.M. 1947, 75-8117.1; (2), (3)En. Secs. 10, 11, Ch. 392, L. 1979; amd. Sec. 31, Ch. 392, L. 1979.

Cross-References

Applicability of public employees' retirement system, 19-3-403.

Teachers' retirement system, Title 19, ch. 20.

School elections, Title 20, ch. 20.

Governmental code of fair practices, Title 49, ch. 3.

20-15-226. Personal liability of trustees. (1) The trustees of each community college district are responsible for the proper administration and utilization of all money of the district. Failure or refusal to do so constitutes grounds for removal from office.

(2) Trustees consenting to illegal use of money are jointly and individually liable to the district for any losses sustained by the district. The county attorney shall prosecute any proceedings arising pursuant to this section, or a party seeking such action may retain private counsel. The party commencing the action is liable for the costs if the action fails.

History: En. Sec. 9, Ch. 392, L. 1979.

Cross-References

Penalty for violation of school laws, 20-1-207.

Official misconduct, 45-7-401.

20-15-227. Trustee removal procedure. (1) Any person may seek the removal of a community college trustee by filing a complaint with the board of county commissioners, containing charges based on one or more of the grounds cited in 20-15-228.

(2) If upon receiving such a complaint it appears that there is probable cause for removal, the board of county commissioners shall suspend such trustee from his trustee position until charges can be heard in the appropriate district court. The board of county commissioners shall then transmit the complaint, together with a statement of suspension, to the district court.

History: En. Sec. 6, Ch. 392, L. 1979.

20-15-228. Grounds for removal. A community college trustee may be removed whenever he:

- (1) moves his residence from the applicable community college district;
- (2) is no longer a registered elector of the community college district under the provisions of 20-20-301;
- (3) is absent from the district 60 consecutive days;
- (4) fails to attend three consecutive meetings of the trustees without reasonable cause;
- (5) fails to perform responsibilities in accordance with 20-15-226; or
- (6) ceases to have the capacity to hold office.

History: En. Sec. 7, Ch. 392, L. 1979.

Cross-References

Residence — rules for determining, 1-1-215.

20-15-229. Audit of district. A community college district is subject to audit by the legislative auditor in the same manner as a state agency. A community college district may contract for an audit with a private accounting firm, subject to approval of the legislative auditor.

History: En. Sec. 14, Ch. 392, L. 1979.

Cross-References

Legislative Audit Act, Title 5, ch. 13.

20-15-230 reserved.

20-15-231. Annexation of territory of districts to community college district. (1) Whenever 10% of the registered electors of an elementary district or districts of a county that is contiguous to the existing community college district petition the board of trustees of a community college district for annexation of the territory encompassed in such elementary school districts, the board of trustees of the community college district may order an annexation election in the area defined by the petition. Such election shall be held on the next general election day.

(2) (a) Prior to the election on the question of annexation, the trustees shall adopt a plan that includes:

(i) a schedule that provides for the orderly transition from the existing trustee representation to the representation required by 20-15-204, with such transition period not to exceed 3 years from the date of the election on the question of annexation;

(ii) provisions relating to the assumption or nonassumption of existing community college district bonded indebtedness by the annexed area and provisions relating to the responsibilities of the annexed area for any bonded indebtedness if it withdraws from the district; and

(iii) a procedure by means of which the electors of the annexed area may withdraw the annexed area from the community college district and the conditions of such withdrawal.

(b) The plan required by this subsection (2) may not be changed by the trustees without the approval of a majority of the electors of the annexed area voting on the question. The bonding provisions of the plan set forth pursuant to subsection (2)(a)(ii) may not be changed.

(3) The election shall be conducted in the proposed area for annexation in accordance with the requirements of the community college organization election, except that the board of trustees of the community college shall perform the requirements of the board of regents and there shall not be an election of the board of trustees of the community college.

(4) The proposition on the ballot shall be as follows:

Shall school districts be annexed to and become a part of the Community College District of ..., Montana?

☐ FOR annexation.

☐ AGAINST annexation.

(5) To carry, the proposals to annex must receive a majority of the total votes cast thereon. Upon receipt of the certified results of the election from the elementary districts encompassed in the proposed area to be annexed, the board of trustees of the community college district shall canvass the vote and declare the results of the election. If the annexation proposition carries, a certified copy of the canvassing resolution shall be filed in the office of the county clerk and recorder of the county encompassing the area to be annexed and, upon such filing, the area to be annexed shall then become a part of the community college district.

History: En. 75-8125 by Sec. 472, Ch. 5, L. 1971; amd. Sec. 1, Ch. 162, L. 1971; R.C.M. 1947, 75-8125; amd. Sec. 4, Ch. 575, L. 1983; amd. Sec. 1, Ch. 474, L. 1985.

20-15-232 through 20-15-240 reserved.

20-15-241. Community college service regions — creation. (1) The governing body of an elementary school district, high school district, county, or municipality not within a community college district may designate itself a community college service region, as provided in this section.

(2) A service region may be designated only if, within 12 months preceding any designation, the following conditions are met:

(a) the service plan required by subsection (3) is available;

(b) the board of trustees of the community college district that will offer services within the region has approved the designation;

(c) the electors within the region have approved the designation by a majority of votes cast on the question in an election held on a general election day; and

(d) the board of regents has approved the designation.

(3) (a) At least 90 days prior to the granting of any of the approvals listed in subsections (2)(b) through (2)(d), a written plan must be made available that:

(i) details the services the community college district will offer within the region;

(ii) details who will be eligible to use the services and the charges that will be made to users;

(iii) indicates the facilities that will be used to house the services;

(iv) lists the direct and indirect costs of the services and the apportionment of those costs between the community college district and the governing body designating the service region;

(v) estimates the number of persons expected to use the services within the region; and

(vi) estimates the mill levy necessary to fund the service region and estimates the impact of the election on a home valued at \$100,000 and a home valued at \$200,000 in the district in terms of actual dollars in additional property taxes that would be imposed on residences with those values. The plan may also include a statement of the impact of the election on homes of any other value in the district, if appropriate.

(b) The plan may be revised jointly by the region governing body, board of regents, and the board of trustees of the community college district as a revision may be necessary.

(4) A designation is effective for 5 years and after 5 years is effective unless rescinded by a majority of electors casting votes on the question in an election held on any general election day following expiration of the 5-year period. The question on rescission must be put on the ballot when requested at least 90 days prior to the election by the governing body designating the service region, by the community college board, or by a petition signed by 20% of the registered

electors within the service region. The rescission is effective at the end of the first full academic year following the election rescinding the district designation.

History: En. Sec. 1, Ch. 575, L. 1983; amd. Sec. 29, Ch. 495, L. 2001.

Cross-References

Tax levy for community college service region, 20-15-314.

Part 3 Finance

20-15-301. Sources of financing for and types of capital expenditures. (1) The board of trustees of any community college district may:

- (a) purchase, lease, build, enlarge, alter, or repair school buildings and dormitories;
- (b) furnish and equip buildings;
- (c) purchase sites for buildings;
- (d) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of chapter 9, part 4, of this title.

(2) The board of trustees of a community college district may borrow money for the purposes of this section and repay the obligations from the various revenues of the college.

History: En. 75-8122 by Sec. 469, Ch. 5, L. 1971; amd. Sec. 2, Ch. 419, L. 1973; R.C.M. 1947, 75-8122; amd. Sec. 1, Ch. 488, L. 1989.

Cross-References

School bonds, Title 20, ch. 9, part 4.

20-15-302. Repealed. Sec. 8, Ch. 495, L. 1981.

History: En. Sec. 1, Ch. 401, L. 1971; R.C.M. 1947, 75-8127; amd. Sec. 32, Ch. 392, L. 1979.

20-15-303. Repealed. Sec. 8, Ch. 495, L. 1981.

History: En. Sec. 2, Ch. 401, L. 1971; amd. Sec. 1, Ch. 243, L. 1975; R.C.M. 1947, 75-8128.

20-15-304. Federal and state aid. The board of trustees of a community college district is hereby authorized to accept funds from the federal government or the state of Montana, their instrumentalities, or any of their agencies in aid of any one or more purposes or in maintaining and operating the community college.

History: En. Sec. 4, Ch. 401, L. 1971; R.C.M. 1947, 75-8130.

20-15-305. Adult education tax levy. A community college is considered a district for the purposes of adult education and under the provisions for adult education may, subject to 15-10-420, levy a tax for the support of its adult education program when the superintendent of public instruction approves the program.

History: En. Sec. 3, Ch. 401, L. 1971; R.C.M. 1947, 75-8129; amd. Sec. 116, Ch. 584, L. 1999; amd. Sec. 124, Ch. 574, L. 2001.

Cross-References

Adult education, Title 20, ch. 7, part 7.

20-15-306. Repealed. Sec. 8, Ch. 495, L. 1981.

History: En. Sec. 5, Ch. 401, L. 1971; R.C.M. 1947, 75-8131.

20-15-307. Repealed. Sec. 8, Ch. 495, L. 1981.

History: En. Sec. 6, Ch. 401, L. 1971; amd. Sec. 28, Ch. 266, L. 1977; R.C.M. 1947, 75-8132.

20-15-308. Deposit of moneys. Community college district moneys shall be deposited with the county treasurer of the county where the community college is located or with other depositories approved by the regents.

History: En. Sec. 7, Ch. 401, L. 1971; R.C.M. 1947, 75-8133.

20-15-309. Proposed budget. The board of trustees of a community college district shall submit a proposed budget to the board of regents by August 15 immediately preceding each regular legislative session. The proposed budget shall be for the next biennium and in a form approved by the state budget director and the commissioner of higher education and shall be calculated in the same manner as the operating budget described in 20-15-312. The board of regents shall review the proposed budget and all its components and make any changes it determines necessary. By the following September 1, the board of regents shall submit its proposal for funding the community colleges to the budget director and the legislative fiscal analyst.

History: En. Sec. 1, Ch. 495, L. 1981.

Cross-References

School budgeting procedure applicable to community colleges, 20-9-101.

Completion, filing, and delivery of final budgets, 20-9-134.

Emergency budget petitions, 20-9-161, 20-9-163.

Emergency budgets, 20-9-165.

20-15-310. Appropriation — definitions. (1) It is the intent of the legislature that all community college spending, other than from restricted funds, designated funds, or funds generated by an optional, voted levy, be governed by the provisions of this part and the state general appropriations act.

(2) (a) The state general fund appropriation must be determined as follows:

(i) multiply the variable cost of education per student by the full-time equivalent student count and add the budget amount for the fixed cost of education; and

(ii) multiply the total in subsection (2)(a)(i) by the state share.

(b) The variable cost of education per student, the budget amount for fixed costs, and the state share must be determined by the legislature. The state share, expressed as a percentage, and the variable cost of education per student must be specified in the appropriations act appropriating funds to the community colleges for each biennium.

(3) The student count may not include those enrolled in community service courses as defined by the board of regents.

(4) As used in this section, the following definitions apply:

(a) “Cost of education” means the actual costs incurred by the community colleges during the budget base fiscal year, as reported on the current unrestricted operating fund schedule that is statutorily required to be submitted to the commissioner of higher education, minus any reversion and one-time-only expenditures that are included.

(b) “Fixed cost of education” means that portion of the cost of education, as determined by the legislature, that is not influenced by increases or decreases in student enrollment.

(c) “Variable cost of education per student” means that portion of the cost of education, as determined by the legislature, that is subject to change as a result of increases or decreases in student enrollment, divided by the actual student enrollment during the budget base fiscal year.

History: En. Sec. 2, Ch. 495, L. 1981; amd. Sec. 1, Ch. 494, L. 1989; amd. Sec. 1, Ch. 493, L. 2007.

Compiler’s Comments

2007 Amendment: Chapter 493 in (1) near middle inserted “designated funds”; in (2)(a) in introductory clause at end after “must be” substituted “determined as follows” for “based on a budget amount per full-time equivalent student, as determined by the legislature”; inserted (2)(a)(i) and (2)(a)(ii) concerning multiplication formula; inserted (2)(b) requiring determination of various amounts by the legislature; inserted (4) providing definitions; and made minor changes in style. Amendment effective July 1, 2007.

Effective Date — Applicability: Section 3, Ch. 493, L. 2007, provided: “[This act] is effective July 1, 2007, and applies to funds appropriated on or after July 1, 2007.”

20-15-311. Funding sources. The annual operating budget of a community college district must be financed from the following sources:

(1) the estimated revenue to be realized from student tuition and fees, except revenue related to community service courses, as defined by the board of regents;

(2) subject to 15-10-420, a mandatory mill levy on the community college district;

(3) subject to 15-10-420, the adult education levy authorized under provisions of 20-15-305;

(4) the state general fund appropriation;

(5) an optional voted levy on the community college district that must be submitted to the electorate in accordance with general school election laws and 15-10-425;

(6) all other income, revenue, balances, or reserves not restricted by a source outside the community college district to a specific purpose;

(7) income, revenue, balances, or reserves restricted by a source outside the community college district to a specific purpose. Student fees paid for community service courses, as defined by the board of regents, are considered restricted to a specific purpose.

(8) income from a political subdivision that is designated a community college service region under 20-15-241.

History: En. Sec. 3, Ch. 495, L. 1981; amd. Sec. 3, Ch. 575, L. 1983; amd. Sec. 117, Ch. 584, L. 1999; amd. Sec. 30, Ch. 495, L. 2001; amd. Sec. 125, Ch. 574, L. 2001.

20-15-312. Calculation and approval of operating budget. (1) Annually by September 1, the board of trustees of a community college shall submit an operating budget to the board of regents for their review. The operating budget of the community college must be financed in the following manner:

- (a) The general fund appropriation must be determined pursuant to 20-15-310.
- (b) The mandatory levy amount must represent a specific percentage of the combined total of the fixed cost of education and the variable cost of education, as those terms are defined in 20-15-310, and as determined by the legislature. This percentage must be specified for each community college by the board of trustees of the district and approved by the board of regents.
- (c) The funding obtained pursuant to subsections (1)(a) and (1)(b) plus the revenue derived from tuition and fee schedules approved by the board of regents and unrestricted income from any other source is the amount of the unrestricted budget. A detailed expenditure schedule for the unrestricted budget must be submitted to the board of regents for their review and approval.
- (d) The amount estimated to be raised by the voted levy must be detailed separately in an expenditure schedule.
- (e) The spending of each restricted or designated funding source must be detailed separately in an expenditure schedule.
- (f) The expenditure schedules provided in subsections (1)(c) through (1)(e) represent the total operating budget of the community college.

(2) The board of regents shall review the proposed total operating budget and all its components and make any changes it determines necessary. The board of trustees of a community college district shall operate within the limits of the operating budget approved by the board of regents.

History: En. Sec. 4, Ch. 495, L. 1981; amd. Sec. 2, Ch. 494, L. 1989; amd. Sec. 4, Ch. 243, L. 1997; amd. Sec. 2, Ch. 493, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 493 in (1)(a) after "must" substituted "be determined pursuant to 20-15-310" for "represent a specific percentage of the budget amount per full-time equivalent student, as determined by the legislature. This percentage must be specified in the appropriations act appropriating funds to the community colleges for each biennium. This percentage does not apply to any portion of the unrestricted budget in excess of the budget amount per full-time equivalent student, as determined by the legislature"; in (2)(b) in first sentence after "specified percentage of the" substituted reference to combined total of fixed and variable costs of education as defined in 20-15-310 for "budget amount per full-time equivalent student"; in (2)(e) inserted "or designated"; and made minor changes in style. Amendment effective July 1, 2007.

Effective Date — Applicability: Section 3, Ch. 493, L. 2007, provided: "[This act] is effective July 1, 2007, and applies to funds appropriated on or after July 1, 2007."

Cross-References

School budgeting procedure applicable to community colleges, 20-9-101.
Completion, filing, and delivery of final budgets, 20-9-134.
Emergency budget petitions, 20-9-161, 20-9-163.
Emergency budgets, 20-9-165.

20-15-313. Tax levy. On the second Monday in August, the board of county commissioners of any county where a community college district is located shall, subject to 15-10-420, fix and levy a tax on all the real and personal property within the community college district at the rate required to finance the mandatory mill levy prescribed by 20-15-312(1)(b) and the voted levy prescribed by 20-15-311(5) if one has been approved by the voters. When a community college district has territory in more than one county, the board of county commissioners in each county shall fix and levy the community college district tax on all the real and personal property of the community college district situated in its county.

History: En. Sec. 5, Ch. 495, L. 1981; amd. Sec. 118, Ch. 584, L. 1999.

Cross-References

Property tax levies, Title 15, ch. 10.

20-15-314. Tax levy for community college service region. Subject to 15-10-420, a governing body designating a community college service region as provided in 20-15-241 may levy a tax on all real and personal property within the region at a rate required to finance the services offered by a community college district for the region. The levy is in addition to any other levies allowed by law and is not subject to any statutory or charter limitations on levies other than 15-10-420. The levy must be made at the same time and in the same manner as the general

levy of the political subdivision designating the region is made, and the revenue generated must be collected at the same time and in the same manner. Within 30 days of collection, the appropriate revenue must be transmitted to the participating community college district.

History: En. Sec. 2, Ch. 575, L. 1983; amd. Sec. 119, Ch. 584, L. 1999.

Cross-References

Community college service regions, 20-15-241.

20-15-315 through 20-15-320 reserved.

20-15-321. General fund cash reserve. At the end of each school fiscal year the board of trustees of a community college district may designate a portion of the general fund end-of-the-year cash balance as a cash reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. The amount of the general fund cash balance that is earmarked as cash reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

History: En. Sec. 3, Ch. 488, L. 1989.

20-15-322 reserved.

20-15-323. Definition of emergency for budgeting purposes. As used in this chapter, unless the context clearly indicates otherwise, the term “emergency” for the purpose of community college budgeting means:

(1) the destruction or impairment of any community college district property necessary to the maintenance of the district, by fire, flood, storm, riot, insurrection, or act of God, to an extent rendering the property unfit for its present use;

(2) a judgment for damages against the district issued by a court after the adoption of the budget for the current year;

(3) an enactment of legislation after the adoption of the budget for the current year that imposes an additional financial obligation on the district; or

(4) any other reason of similar consequence that has been approved by the board of regents upon petition by the trustees of the district.

History: En. Sec. 51, Ch. 767, L. 1991.

20-15-324. Resolution for emergency budget — petition to board of regents. (1) Whenever the trustees of a community college district decide that an emergency exists, they may adopt a resolution proclaiming the emergency by a unanimous vote of all members present at any meeting for which each trustee has been given reasonable notice of the time and place of holding the meeting. The emergency resolution must also state the facts constituting the emergency, the estimated amount of money required to meet the emergency, the funds affected by the emergency, and the time and place the board will meet for the purpose of considering and adopting an emergency budget for the funds for the current school fiscal year.

(2) If the trustees decide that an emergency exists for any reason other than the conditions specified in 20-9-161(1) through (3), they shall petition the board of regents for permission to adopt a resolution of emergency. The petition must set forth in writing the reasons for the request, the district funds affected by the emergency, the estimated amount of money required to meet the emergency for each affected fund, the anticipated sources of financing for the emergency expenditures, and any other information required by the board of regents. The petition must be signed by each trustee.

(3) The board of regents shall promptly approve or disapprove the petition requesting approval to adopt a resolution of emergency. If the petition is approved, the trustees may adopt a resolution of emergency and take all other steps required for the adoption of an emergency budget. Approval of a petition by the board of regents authorizes the board of trustees to initiate emergency budget proceedings by resolution and does not relieve the trustees of the necessity of complying with the requirements of the emergency budgeting laws.

History: En. Sec. 52, Ch. 767, L. 1991.

20-15-325. Emergency budget limitation, preparation, and adoption procedures.

(1) The meeting of the trustees of a community college district to consider and adopt an emergency budget must be open to the public, and any taxpayer in the district has the right to appear and be heard. If at the meeting a majority of the trustees present find that an emergency

exists, the trustees may make and adopt a preliminary emergency budget, on the regular budget form, setting forth fully the facts constituting the emergency. In adopting the preliminary emergency budget, the trustees may budget for any fund that was included on the final budget of the district for the current fiscal year. The budget must be itemized to show the amount appropriated for each item as required on the budget form.

(2) When the emergency is the result of increased enrollment, the maximum amount of the emergency budget for all funds must be determined by budget amendment.

(3) If another type of emergency occurs, the budget must be limited to the expenditures considered by the trustees to be reasonable and necessary to finance the conditions of the emergency, and the preliminary emergency budget must include the details of the proposed expenditures.

(4) After a majority of the trustees have voted to adopt the emergency budget, it must be signed by the presiding officer of the trustees and the clerk of the district and copies must be sent to the county superintendent and the board of regents.

History: En. Sec. 53, Ch. 767, L. 1991; amd. Sec. 9, Ch. 260, L. 1995.

20-15-326. Determination of available financing — fixing and levying property taxation for emergency budget. (1) After the last day of the fiscal year for which an emergency budget has been adopted, the board of trustees shall determine the amount of the cash balance that is available to finance the emergency budget's outstanding warrants or registered warrants for each fund included on the emergency budget. The available amount of the cash balance of each fund must be determined by deducting from the county treasurer's yearend cash balance for the fund the outstanding warrants or registered warrants issued under the regularly adopted final budget for the fund and the cash reserve for the fund that the trustees have established, within the limitations of law, for the following fiscal year.

(2) The county treasurer shall prepare and deliver a statement on the financial cash status of each fund included on an emergency budget for a district that had an emergency budget during the preceding year to the board of county commissioners by the first Monday in August. The statement for each district emergency budget must include:

(a) the total amount of emergency warrants that are registered against each fund of the district; and

(b) the additional amount of money that is required to finance the registered warrants and interest on the warrants and that must be raised by a tax levy.

(3) For each fund of the emergency budget of each district requiring a tax levy as established by subsection (2)(b), the board of county commissioners shall at the time all other district and county taxes are fixed and levied, levy a tax on the taxable value of all taxable property of each applicable district that will raise sufficient financing to pay the amount established by the county treasurer.

History: En. Sec. 54, Ch. 767, L. 1991; amd. Sec. 10, Ch. 260, L. 1995; amd. Sec. 116, Ch. 42, L. 1997; amd. Sec. 120, Ch. 584, L. 1999; amd. Sec. 126, Ch. 574, L. 2001.

Part 4 Relationship to Other Laws

Part Cross-References

Pupil immunization requirements, Title 20, ch. 5, part 4.

20-15-401. Purpose. It is the purpose of this chapter to establish the governance of community college districts in Montana. The legislature intends that the board of regents and the local boards of trustees of community college districts coordinate their responsibilities to insure an orderly development of educational services to the citizens of Montana in accordance with this chapter.

History: En. Sec. 1, Ch. 392, L. 1979.

20-15-402. Precedence of community college chapter. Unless specifically identified in any other sections of the school laws prescribed in this title, community college districts are governed by the provisions of this chapter. Should there be a conflict between other requirements of this title and the provisions of this chapter regulating community college districts, the provisions of this chapter shall govern.

History: En. Sec. 2, Ch. 392, L. 1979.

20-15-403. Applications of other school district provisions. (1) When the term “school district” appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-605, 15-70-301, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-401, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 40-6-237, 49-3-101, 49-3-102, 52-2-617, 53-20-304, 82-10-201 through 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term “school district” appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district.

History: En. Sec. 12, Ch. 392, L. 1979; amd. Sec. 6, Ch. 495, L. 1981; amd. Sec. 2, Ch. 570, L. 1981; amd. Sec. 76, Ch. 575, L. 1981; amd. Sec. 27, Ch. 465, L. 1983; amd. Sec. 6, Ch. 15, L. 1985; amd. Sec. 72, Ch. 370, L. 1987; amd. Sec. 5, Ch. 512, L. 1987; amd. Sec. 58, Ch. 587, L. 1987; amd. Sec. 14, Ch. 10, Sp. L. July 1992; amd. Sec. 43, Ch. 525, L. 1993; amd. Sec. 8, Ch. 539, L. 1993; amd. Sec. 1, Ch. 310, L. 1997; amd. Sec. 7, Ch. 522, L. 1997; amd. Sec. 2, Ch. 18, L. 1999.

20-15-404. Trustees to adhere to certain other laws. Unless the context clearly indicates otherwise, the trustees of a community college district shall adhere to:

- (1) the teachers’ retirement provisions of Title 19, chapter 20;
- (2) the provisions of 20-1-201, 20-1-205, 20-1-211, and 20-1-212;
- (3) the school property provisions of 20-6-604, 20-6-605, 20-6-621, 20-6-622, 20-6-624, 20-6-631, and 20-6-633 through 20-6-636;
- (4) the adult education provisions of Title 20, chapter 7, part 7;
- (5) the administration of finances provisions of 20-9-115, 20-9-134, 20-9-207, 20-9-208, 20-9-210, 20-9-215, 20-9-221, 20-9-223, and 20-9-512;
- (6) the school bond provisions of 20-9-401 through 20-9-408, 20-9-410 through 20-9-412, 20-9-421 through 20-9-446, 20-9-461, 20-9-464, and 20-9-465;
- (7) the special purpose funds provisions of 20-9-502, 20-9-503, 20-9-507, 20-9-508, and 20-9-511;
- (8) the educational cooperative agreements provisions of 20-9-701 through 20-9-704;
- (9) the school elections provisions of Title 20, chapter 20;
- (10) the students’ rights provisions of 20-25-511 through 20-25-516; and
- (11) the health provisions of 50-1-206.

History: En. Sec. 13, Ch. 392, L. 1979; amd. Sec. 7, Ch. 495, L. 1981; amd. Sec. 1, Ch. 270, L. 1983; amd. Sec. 73, Ch. 370, L. 1987; amd. Sec. 2, Ch. 488, L. 1989; amd. Sec. 49, Ch. 767, L. 1991; amd. Sec. 11, Ch. 260, L. 1995; amd. Sec. 49, Ch. 423, L. 1995; amd. Sec. 117, Ch. 42, L. 1997; amd. Sec. 21, Ch. 219, L. 1997; amd. Sec. 12, Ch. 94, L. 2007.

Compiler’s Comments

2007 Amendment: Chapter 94 in (6) after “20-9-461” substituted “20-9-464, and” for “through”; and made minor changes in style. Amendment effective October 1, 2007.

CHAPTER 20 SCHOOL ELECTIONS

Part 1 — General Provisions

- 20-20-101. Definition.
- 20-20-102. Precedence of school election provisions.
- 20-20-103. Election by ballot.
- 20-20-104. Forms.
- 20-20-105. Regular school election day and special school elections — limitation — exception.
- 20-20-106. Poll hours.
- 20-20-107. Election expenses.
- 20-20-108. Rescheduling of school election canceled due to declaration of state of emergency or disaster.

Part 2 — Calling of and Preparation for School Elections

- 20-20-201. Calling of school election.

- 20-20-202. Time limitation for conduct of election.
- 20-20-203. Resolution for poll hours, polling places, and judges.
- 20-20-204. Election notice.

Part 3 — Qualification and Registration of Electors

- 20-20-301. Qualifications of elector.
- 20-20-302. Repealed.
- 20-20-303. Elector challenges.
- 20-20-304 through 20-20-310 reserved.
- 20-20-311. Closure of registration.
- 20-20-312. Listing of registered electors.
- 20-20-313. Delivery and charge for lists of registered electors.

Part 4 — Election Procedure

- 20-20-401. Trustees' election duties — ballot certification.
- 20-20-402. Clerk of election judges and appointment for absent judge.
- 20-20-403 through 20-20-409 reserved.
- 20-20-410. Oath of judges.
- 20-20-411. Conduct of election.
- 20-20-412. Repealed.
- 20-20-413. Repealed.
- 20-20-414. Repealed.
- 20-20-415. Trustees to canvass votes.
- 20-20-416. Certificate of election.
- 20-20-417. Request for county election administrator to conduct election.
- 20-20-418 through 20-20-420 reserved.
- 20-20-421. Voting systems.

Chapter Cross-References

- General election provision, Title 13, ch. 1.
- Registration of electors, Title 13, ch. 2.
- Voting systems, Title 13, ch. 17.
- Election and campaign practices and criminal provisions, Title 13, ch. 35.
- Control of campaign practices, Title 13, ch. 37.
- Bribery in official and political matters, 45-7-101.
- Threats and other improper influence in official and political matters, 45-7-102.
- Exemption of electors from arrest, 46-6-102.
- Basic political rights, Title 49, ch. 1, part 2.

Part 1 General Provisions

20-20-101. Definition. As used in this title, unless the context clearly indicates otherwise, “school election” means any election conducted by a district or community college district for the purpose of electing trustees, for authorizing taxation, for authorizing the issuance of bonds by an elementary district or a high school district, or for accepting or rejecting any proposition that may be presented to the electorate for decision in accordance with the provisions of this title.

History: En. 75-6401 by Sec. 137, Ch. 5, L. 1971; R.C.M. 1947, 75-6401.

Cross-References

- Election of trustees, 20-3-301.
- County high school unification, 20-6-312.
- Opening junior high school when high school district operates county high school, 20-6-505.
- Trustees' authority to acquire or dispose of sites and buildings — when election required, 20-6-603.
- Selection of school sites, approval election, and lease of state lands, 20-6-621.
- Election to authorize issuance of school district bonds and methods of introduction, 20-9-421.
- Purpose and authorization of a building reserve fund by election, 20-9-502.
- Election for school bus transportation purposes, 20-10-132.
- Election for transfer of bus depreciation reserve, 20-10-147.
- Community college district organization election, 20-15-203, 20-15-208.
- Election of trustees after organization of community college district, 20-15-221.
- Annexation of territory of districts to community college district, 20-15-231.

20-20-102. Precedence of school election provisions. Except as otherwise provided in this title, school elections shall be conducted and canvassed and the results shall be returned in the same manner as provided for general elections in Title 13. Should there be a conflict between the requirements of Title 13 and the provisions of this title regulating school elections, the

provisions of this title shall govern. The superintendent of public instruction may make any necessary rules to clarify Title 13 provisions for use in school elections.

History: En. 75-6402 by Sec. 138, Ch. 5, L. 1971; R.C.M. 1947, 75-6402; amd. Sec. 355, Ch. 571, L. 1979.

20-20-103. Election by ballot. All school elections shall be by ballot.

History: En. 75-6403 by Sec. 139, Ch. 5, L. 1971; R.C.M. 1947, 75-6403.

Cross-References

Mail ballot elections prohibited, 13-19-104.

20-20-104. Forms. The forms necessary for school district elections shall be the same as those prescribed by law or the secretary of state. The superintendent of public instruction may issue prescribed forms for school elections with any necessary revisions of prescribed or statutory forms.

History: En. Sec. 120, Ch. 368, L. 1969; R.C.M. 1947, 23-3702; amd. Sec. 356, Ch. 571, L. 1979.

20-20-105. Regular school election day and special school elections — limitation — exception. (1) Except as provided in subsection (4), the first Tuesday after the first Monday of May of each year is the regular school election day. Except as provided in subsections (3) and (4), a proposition requesting additional funding under 20-9-353 may be submitted to the electors only once each calendar year on the regular school election day.

(2) Subject to the provisions of subsection (1), special school elections may be conducted at times determined by the trustees.

(3) In the event of an unforeseen emergency occurring on the date scheduled for the funding election pursuant to subsection (1), the district will be allowed to reschedule the election for a different day of the calendar year. As used in this section, “unforeseen emergency” has the meaning provided in 20-3-322(5).

(4) In years when the legislature meets in regular session or in a special session that affects school funding, the trustees may order the election on a date other than the regular school election day in order for the electors to consider a proposition requesting additional funding under 20-9-353.

History: En. 75-6404 by Sec. 140, Ch. 5, L. 1971; amd. Sec. 1, Ch. 109, L. 1974; R.C.M. 1947, 75-6404; amd. Sec. 8, Ch. 644, L. 1987; amd. Sec. 8, Ch. 514, L. 1999; amd. Sec. 1, Ch. 192, L. 2007.

Compiler’s Comments

2007 Amendment: Chapter 192 in (1) in first sentence at beginning inserted exception clause and in second sentence in exception clause inserted reference to subsection (4); inserted (4) concerning election in years in which legislature meets; and made minor changes in style. Amendment effective April 11, 2007.

Extension of School Election Deadlines — Applicability: Section 3, Ch. 192, L. 2007, provided: “In order to allow for the more orderly and efficient conduct of the regular school elections scheduled for May 8, 2007, it may not be possible to comply with certain statutory deadlines relating to a school election. Therefore, in 2007 only, a school district may limit the regular school election scheduled for May 8, 2007, to trustee elections only and may reschedule a single general fund operating levy election at any time prior to the adoption of a final budget pursuant to 20-9-131. For any levy election rescheduled under this section, a resolution calling for the election may not be adopted later than 20 days before the scheduled election and final ballot language may not be adopted later than 10 days before the date of the election. In addition, all statutory deadlines for the May 2007 regular school election are extended to April 27, 2007.”

Cross-References

Annual election, 20-3-304.

20-20-106. Poll hours. (1) The polls for any school election in any district shall open not later than noon. The trustees may order the polls to open earlier, but no earlier than 7 a.m.

(2) If the school election is held on the same day as an election held by a political subdivision under 13-1-104(3) and at the same polling place, the polls shall be opened and closed at the times required for the school election.

(3) If the school election is held on the same day as a general or primary election, the polls shall be opened and closed at the times required for the general or primary election.

(4) Once opened, the polls shall be kept open continuously until 8 p.m., except that whenever all the registered electors at any poll have voted, the poll shall be closed immediately.

History: En. 75-6405 by Sec. 141, Ch. 5, L. 1971; R.C.M. 1947, 75-6405; amd. Sec. 357, Ch. 571, L. 1979; amd. Sec. 2, Ch. 57, L. 1985; amd. Sec. 2, Ch. 372, L. 1987.

Cross-References

Time of opening and closing of polls for all elections, 13-1-106.

20-20-107. Election expenses. All expenses necessarily incurred in the matter of holding school elections shall be paid out of the school funds of the district, except when such expenses are by law to be shared by a community college district for which the district is conducting an election. The trustees may pay the election judges of a school election at a rate not to exceed the prevailing federal minimum wage per hour of service in connection with such election.

History: En. 75-6420 by Sec. 156, Ch. 5, L. 1971; R.C.M. 1947, 75-6420.

Cross-References

Conduct of community college elections, 20-15-208.

Trustee election upon order of trustees, 20-15-221.

20-20-108. Rescheduling of school election canceled due to declaration of state of emergency or disaster. If the governor declares a state of emergency or disaster under Title 10, chapter 3, a school election may be canceled by the county superintendent of schools or, in the absence of the county superintendent, by the state superintendent of public instruction. As soon as convenient after the declaration of a state of emergency or disaster is terminated, the trustees of the district shall set a new date for the election. Notice of such election shall be published for 7 consecutive days in a newspaper of general circulation in the district and posted for 7 days at district polling places. Whenever the best interests of the district would be served, the trustees may give additional notice of the election through appropriate radio and television stations that serve the people of the district.

History: En. Sec. 1, Ch. 153, L. 1981.

Part 2

Calling of and Preparation for School Elections

20-20-201. Calling of school election. (1) At least 40 days before any school election, the trustees of any district shall call such school election by resolution, stating the date and purpose of such election, and shall conduct it in accordance with the procedures required by law, when:

- (a) an election must be held on the regular school election day;
- (b) in their discretion, the trustees order an election for a purpose authorized by law;
- (c) the county superintendent orders an election in accordance with the law authorizing such an order;
- (d) the board of public education orders an election in accordance with the law authorizing such an order;
- (e) the county commissioners order an election in accordance with the law authorizing such an order;
- (f) the board of trustees of a community college district orders an election in accordance with the law authorizing such an order (in which case the community college district shall bear its share of the cost of such election); or
- (g) a school election is required by law under any other circumstances.

(2) The resolution calling any school election shall be transmitted to the county election administrator no later than 35 days before the election in order to enable him to close the registration and prepare the lists of registered electors as required by school election laws.

History: En. 75-6406 by Sec. 142, Ch. 5, L. 1971; R.C.M. 1947, 75-6406; amd. Sec. 358, Ch. 571, L. 1979.

Cross-References

Election Administrator, 13-1-301.

Mail ballot elections prohibited, 13-19-104.

Conduct of elections, 20-3-306.

County high school unification, 20-6-312.

Opening junior high school when high school district operates county high school, 20-6-505.

Trustees' authority to acquire and dispose of sites and buildings, 20-6-603.

Selection of school sites, approval election, and lease of state lands, 20-6-621.

Election to authorize issuance of school district bonds, 20-9-421.

Purpose and authorization of a building reserve fund by election, 20-9-502.

Joint interstate school agreements, 20-9-705.

Duties of County Transportation Committee, 20-10-132.

20-20-202. Time limitation for conduct of election. Whenever the trustees of any district receive an order to call an election, they shall conduct such election any time within 60 days after the date of the order unless the law or order otherwise regulates the day or timing of such election.

History: En. 75-6407 by Sec. 143, Ch. 5, L. 1971; R.C.M. 1947, 75-6407.

20-20-203. Resolution for poll hours, polling places, and judges. (1) At the trustee meeting when a school election is called, the trustees shall:

- (a) except as provided in 20-20-106(3), establish the time at which the polls are to open if in their discretion they determine that the polls shall be open before noon;
- (b) establish the polling places for such election, using the established polling places for general elections within the district wherever possible;
- (c) appoint, from among the qualified electors of the district, at least three judges for each polling place for such election and notify each judge of such appointment not less than 10 days before the election.

(2) There shall be one polling place in each district unless the trustees establish additional polling places. If more than one polling place is established, the trustees shall define the boundaries for each polling place, and such trustee-defined polling place boundaries shall be coterminous with county precinct boundaries existing within a district. If the site of a polling place is changed from the polling place site used for the last preceding school election, special reference to the changed site of the polling place shall be included in the notice for such election.

History: En. 75-6408 by Sec. 144, Ch. 5, L. 1971; R.C.M. 1947, 75-6408; amd. Sec. 359, Ch. 571, L. 1979; amd. Sec. 3, Ch. 57, L. 1985.

Cross-References

Election precincts, Title 13, ch. 3.
Designation of polling place, 13-3-105.
Election judges, Title 13, ch. 4.

20-20-204. Election notice. (1) (a) When the trustees of a district call a school election, they shall give notice of the election not less than 20 days or more than 30 days before the day of the election by:

(i) publication of the notice in a newspaper of general circulation if there is one in the district; and

(ii) posting notices in three public places in the district, provided that in incorporated cities and towns, at least one notice must be posted at a public place in each ward or precinct.

(b) Whenever, in the judgment of the trustees, the best interest of the district will be served by the supplemental publication of the school election notice in a radio or television broadcast, the trustees may cause that notification to be made.

(2) The notice of a school election, unless otherwise required by law, must specify:

- (a) the date and polling places of the election;
- (b) the hours that the polling places will be open;
- (c) each proposition to be considered by the electorate;
- (d) if there are trustees to be elected, the number of positions subject to election and the length of term of each position; and
- (e) where and how absentee ballots may be obtained.

(3) If more than one proposition is to be considered at the same school election, each proposition must be set apart and separately identified in the same notice or published in separate notices.

History: En. 75-6409 by Sec. 145, Ch. 5, L. 1971; R.C.M. 1947, 75-6409; amd. Sec. 360, Ch. 571, L. 1979; amd. Sec. 3, Ch. 372, L. 1987; amd. Sec. 3, Ch. 144, L. 1997.

Cross-References

Supplemental publication of notice by radio or television, 2-3-105 through 2-3-107.
Notice of school bond election by separate purpose, 20-9-427.

Part 3 Qualification and Registration of Electors

20-20-301. Qualifications of elector. An individual is entitled to vote at school elections if he has the qualifications set forth in 13-1-111 and is a resident of the school district or, in a school district that has been apportioned into single-member trustee districts according to 20-3-337, a resident of the trustee district.

History: En. 75-6410 by Sec. 146, Ch. 5, L. 1971; amd. Sec. 2, Ch. 83, L. 1971; amd. Sec. 1, Ch. 118, L. 1971; amd. Sec. 4, Ch. 91, L. 1973; amd. Sec. 31, Ch. 100, L. 1973; amd. Sec. 10, Ch. 266, L. 1977; R.C.M. 1947, 75-6410; amd. Sec. 361, Ch. 571, L. 1979; amd. Sec. 6, Ch. 539, L. 1987.

Cross-References

Qualifications of electors, Art. IV, sec. 2, Mont. Const.
 Rules for determining residence, 1-1-215, 13-1-112, 13-1-113.

20-20-302. Repealed. Sec. 1, Ch. 208, L. 1983.

History: En. Sec. 1, Ch. 98, L. 1923; amd. Sec. 1, Ch. 47, L. 1929; re-en. Sec. 5199.1, R.C.M. 1935; amd. Sec. 1, Ch. 126, L. 1959; R.C.M. 1947, 84-4711(part).

20-20-303. Elector challenges. (1) An elector may challenge the qualifications of another elector under the provisions of 13-13-301(1). Any person offering to vote in a school election may be challenged by any elector of the district on any of the grounds for challenge established in 13-13-301(2). The challenge must be determined in the same manner, using the same oath as provided in Title 13, chapter 13, part 3.

(2) Any person who has been challenged under any of the provisions of this section and who swears or affirms falsely before any school election judge is guilty of false swearing and is punishable as provided in 45-7-202.

History: En. 75-6412 by Sec. 148, Ch. 5, L. 1971; amd. Sec. 3, Ch. 83, L. 1971; amd. Sec. 5, Ch. 91, L. 1973; amd. Sec. 11, Ch. 266, L. 1977; R.C.M. 1947, 75-6412; amd. Sec. 32, Ch. 130, L. 2005.

20-20-304 through 20-20-310 reserved.

20-20-311. Closure of registration. Registration for school elections shall close for 30 days before any school election, but it shall not be necessary to publish any notice of such closing of registration.

History: En. 75-6413 by Sec. 149, Ch. 5, L. 1971; R.C.M. 1947, 75-6413.

Cross-References

Registration of electors, Title 13, ch. 2.

20-20-312. Listing of registered electors. After closing registration, the county election administrator shall prepare a list of registered electors for each polling place established by the trustees. The list for each polling place shall be prepared in the format of a precinct register book.

History: En. 75-6414 by Sec. 150, Ch. 5, L. 1971; amd. Sec. 4, Ch. 83, L. 1971; R.C.M. 1947, 75-6414; amd. Sec. 362, Ch. 571, L. 1979.

Cross-References

Local election administration, Title 13, ch. 1, part 3.

20-20-313. Delivery and charge for lists of registered electors. Before the day of the election, the election administrator shall deliver a certified copy of the lists of registered electors for each polling place to the district. The district shall deliver them to the election judges prior to the opening of the polls. The district shall reimburse the county for the actual costs of preparing the lists of registered electors.

History: En. 75-6415 by Sec. 151, Ch. 5, L. 1971; R.C.M. 1947, 75-6415; amd. Sec. 363, Ch. 571, L. 1979.

Cross-References

Local election administration, Title 13, ch. 1, part 3.

Part 4

Election Procedure

20-20-401. Trustees' election duties — ballot certification. (1) The trustees are the general supervisors of school elections unless the trustees request and the county election administrator agrees to conduct a school election under 20-20-417.

(2) Not less than 25 days before an election, the clerk of the district shall prepare a certified list of the names of all candidates entitled to be on the ballot and the official wording for each ballot issue. The clerk shall arrange for printing the ballots. Ballots for absentee voting must be printed and available at least 20 days before the election, except as provided in 20-9-426(2) for a bond election not held in conjunction with a school election. Names of candidates on school election ballots need not be rotated.

(3) Before the opening of the polls, the trustees shall cause each polling place to be supplied with the ballots and supplies necessary to conduct the election.

History: En. 75-6418 by Sec. 154, Ch. 5, L. 1971; R.C.M. 1947, 75-6418; amd. Sec. 364, Ch. 571, L. 1979; amd. Sec. 2, Ch. 481, L. 1983; amd. Sec. 4, Ch. 372, L. 1987; amd. Sec. 4, Ch. 144, L. 1997; amd. Sec. 9, Ch. 514, L. 1999.

Cross-References

Election supplies and ballots, Title 13, ch. 12.

20-20-402. Clerk of election judges and appointment for absent judge. Before conducting the school election and on the day of the election, the judges shall designate one of their number to act as clerk of such election. If any of the judges appointed by the trustees are not present at the time for the opening of the poll, the electors present at that time may appoint a qualified elector for such election to act in the place of the absent judge.

History: En. 75-6419 by Sec. 155, Ch. 5, L. 1971; R.C.M. 1947, 75-6419.

Cross-References

Election judges, Title 13, ch. 4.

20-20-403 through 20-20-409 reserved.

20-20-410. Oath of judges. Before votes are cast, the school election judges shall take and subscribe the official oath prescribed by the constitution. The election judges may administer the oath to each other.

History: En. Sec. 5, Ch. 372, L. 1987.

20-20-411. Conduct of election. Election judges shall conduct school elections in a manner that ensures a fair and unbiased determination of the matters put before the electorate and see that each elector has an adequate opportunity to cast his vote.

History: En. 75-6421 by Sec. 157, Ch. 5, L. 1971; R.C.M. 1947, 75-6421; amd. Sec. 365, Ch. 571, L. 1979.

Cross-References

Election procedure, Title 13, ch. 13.

20-20-412. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 75-6416 by Sec. 152, Ch. 5, L. 1971; R.C.M. 1947, 75-6416(part).

20-20-413. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 75-6422 by Sec. 158, Ch. 5, L. 1971; R.C.M. 1947, 75-6422(1), (2).

20-20-414. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. 75-6422 by Sec. 158, Ch. 5, L. 1971; R.C.M. 1947, 75-6422(3) thru (6).

20-20-415. Trustees to canvass votes. At the first regular or special meeting of the trustees conducted after the receipt of the certified tally sheets of any school election from all the polls of the district, the trustees shall canvass the vote.

History: En. 75-6423 by Sec. 159, Ch. 5, L. 1971; R.C.M. 1947, 75-6423(part); amd. Sec. 366, Ch. 571, L. 1979.

Cross-References

Canvassing, returns, and certificates, Title 13, ch. 15.

Meetings and quorum, 20-3-322.

School bond elections — canvassing, 20-9-428.

20-20-416. Certificate of election. After the canvass of the total votes cast, the trustees shall issue a certificate of election. In the case of a trustee election, either by vote or by acclamation, the certificate must be issued to the elected trustee and the county superintendent designating the term of the trustee position to which the trustee has been elected. In the case of an election on a proposition, the trustees shall issue a certificate specifying the outcome of the election. The certificate must be issued to the official or public body that ordered the election within 15 days after the election. When the election has been ordered by resolution of the trustees, the canvassed results must be published immediately in a newspaper that will give notice to the largest number of people of the district.

History: En. 75-6423 by Sec. 159, Ch. 5, L. 1971; R.C.M. 1947, 75-6423(part); amd. Sec. 367, Ch. 571, L. 1979; amd. Sec. 4, Ch. 132, L. 1999.

Cross-References

Canvassing, returns, and certificates, Title 13, ch. 15.

Election of trustees, 20-3-301.

Qualification and oath of person receiving certificate, 20-3-307.

20-20-417. Request for county election administrator to conduct election. (1) By June 1 of each year, the trustees of any district may request the county election administrator to conduct certain school elections during the ensuing school fiscal year.

(2) Whenever the county election administrator agrees to conduct a school election, he shall:

(a) perform the duties imposed on the trustees and the clerk of the district for school elections in 20-20-203, 20-20-313, and 20-20-401;

(b) conduct the election in accordance with the provisions of Title 13, chapters 13 and 15; and

(c) deliver to the trustees, for the purpose of canvassing the vote, the certified tally sheets and other items as provided in 13-15-301.

(3) Whenever the trustees request the county election administrator to conduct a school election, the school district shall pay the costs of the election as provided in 13-1-302.

History: En. Sec. 1, Ch. 481, L. 1983.

Cross-References

County Election Administrator, 13-1-301.

20-20-418 through 20-20-420 reserved.

20-20-421. Voting systems. Whenever a voting system, as defined in 13-1-101, is available to a district, the voting system may be used for a school election if the voting system has been approved pursuant to 13-17-101 and if the election administrator complies with the provisions of Title 13, chapter 17. In construing the provisions of that chapter, the “county governing body” and the “election administrator” are, for the purposes of this section, considered to refer to trustees and “county” is considered to refer to district.

History: En. 75-6417 by Sec. 153, Ch. 5, L. 1971; R.C.M. 1947, 75-6417; amd. Sec. 368, Ch. 571, L. 1979; amd. Sec. 77, Ch. 575, L. 1981; amd. Sec. 89, Ch. 414, L. 2003.

CHAPTER 25 UNIVERSITY SYSTEM

Part 6

Health Education — Drug and Alcohol Instruction

Part Cross-References

Dangerous drugs, Title 45, ch. 9; Title 50, ch. 32.

Alcoholism and drug dependence, Title 53, ch. 24.

20-25-601. Purpose of part — legislative intent. It is the purpose of this part to protect the health and safety of the people of Montana from the menace of drug and alcohol abuse. The legislature intends to require education graduates of any unit of the Montana university system or any private college or private university in Montana to be aware of the problems resulting from drug and alcohol abuse and to be somewhat knowledgeable in dealing with these problems among students.

History: En. Sec. 1, Ch. 396, L. 1971; amd. Sec. 3, Ch. 137, L. 1975; R.C.M. 1947, 75-8901.

20-25-602. Teacher instruction — colleges to offer course. All units of the Montana university system and all private colleges and private universities in Montana that offer any degree in education shall establish a credit course in health education to include drug and alcohol education and abuse by July 1, 1972. The content of the courses established in the Montana university system shall be reviewed and approved by the board of regents of the Montana university system before being offered for study in the units of the Montana university system.

History: En. Sec. 2, Ch. 396, L. 1971; R.C.M. 1947, 75-8902.

20-25-603. Teacher instruction — course required of education students. All units of the Montana university system and all private colleges and universities in Montana that offer any degree in education shall require that any person who receives any degree in education from that unit, private college, or private university after December 31, 1972, must have successfully completed a course in health education to include drug and alcohol education and abuse prior to being awarded his degree.

History: En. Sec. 3, Ch. 396, L. 1971; R.C.M. 1947, 75-8903.

20-25-604. Department in advisory capacity. The department of public health and human services shall act in an advisory capacity in establishing all courses required under this part, and the courses may be established only after consultation with and advice by the department.

History: En. Sec. 5, Ch. 396, L. 1971; R.C.M. 1947, 75-8905; amd. Sec. 52, Ch. 418, L. 1995; amd. Sec. 73, Ch. 546, L. 1995.

CHAPTER 32 MONTANA EDUCATIONAL TELECOMMUNICATIONS NETWORK

Part 1 — General

- 20-32-101. Purpose — definition.
- 20-32-102. Agency cooperation — responsibilities.
- 20-32-103. Fee collection and disposition for operational costs.
- 20-32-104. Apportionment of costs.

Part 1 General

20-32-101. Purpose — definition. (1) The purpose of this part is to establish a Montana educational telecommunications network.

(2) For the purposes of this part, “network” means the Montana educational telecommunications network (METNET).

(3) The aims of the network are to provide:

(a) instructional and educational coursework and materials through telecommunications delivery to students in kindergarten through 12th grade in the Montana public school system;

(b) instructional and educational coursework and materials through telecommunications delivery to students enrolled in units of the Montana university system and the community colleges;

(c) instructional and professional development or other appropriate inservice training for teachers in the schools of the state; and

(d) telecommunications capabilities to agencies, subdivisions of state government, and public libraries in order to improve their ability to perform their responsibilities and duties.

History: En. Sec. 1, Ch. 622, L. 1991; amd. Sec. 21, Ch. 308, L. 1995.

20-32-102. Agency cooperation — responsibilities. (1) To meet the objectives of the network, the following entities shall cooperate with one another:

(a) the department of administration, with its responsibilities for telecommunications for agencies of state government;

(b) the superintendent of public instruction, with a supervisory role over the public system of elementary and high schools; and

(c) the commissioner of higher education, with responsibilities to the Montana university system and the community colleges.

(2) The responsibilities of the superintendent of public instruction to the network include but are not limited to:

(a) general supervision of delivery of educational materials through telecommunications to elementary and high school districts in the state;

(b) compilation, maintenance, and dissemination to participating school districts of information that identifies the educational programming available from within and from outside the state;

(c) training of teachers and other school personnel in the use of telecommunications technologies for instructional purposes;

(d) assistance to school districts in identifying and procuring the telecommunications technologies needed to interface with the network;

(e) identification of production capability for telecommunication of educational materials;

(f) assistance to participating school districts with group purchases of instructional and educational materials;

(g) coordination with the commissioner of higher education and the units of the Montana university system to offer advanced placement courses, teacher inservice training, and other instruction through the network;

(h) payment of the superintendent's share of the network costs to the department of administration, as provided in 20-32-104;

(i) coordination with the department of administration to ensure compatibility of network components, to minimize duplication of efforts on behalf of the network, and to maximize use of the network by school districts; and

(j) determination of kinds of equipment, inservice, and district accounting necessary to implement the provisions of this part for school districts.

(3) The responsibilities of the department of administration to the network include but are not limited to:

(a) provision of technical support to the coordinating agencies referred to in subsection (1);

(b) development of standards of compatibility for the network;

(c) procurement and management of network equipment and facilities that have shared use by multiple users or agencies;

(d) assistance with procurement, installation, maintenance, and operation of end-terminal equipment and facilities of the network;

(e) minimizing any duplication of equipment and facilities within the network and in conjunction with the department of administration's other networking capabilities;

(f) coordination of use of the network by state agencies, subdivisions of the state, and public libraries in a manner that does not interfere with the delivery of the primary network function of providing educational services to school districts and state units of higher education;

(g) studying the use of the network by Native American tribal colleges and other nonpublic education institutions in the state, with the long-range goal of coordinating the use of the network with those entities; and

(h) maintenance of cost and usage records and a billing system for user agencies for services rendered that incur marginal costs for the network.

(4) The responsibilities of the commissioner of higher education to the network include but are not limited to:

(a) coordination of the use of the network among the units of higher education and with the superintendent of public instruction and the department of administration;

(b) assistance to the units of the Montana university system to provide college credit courses through the network to students throughout the state;

(c) coordination with the superintendent of public instruction to develop advance placement courses for high school students in Montana, teacher inservice training, and other services and instruction through the network;

(d) assistance to the units of the Montana university system and the community colleges in defining their specific needs for interfacing with the network;

(e) assistance to participating units, centers, and colleges with group purchases of instructional and educational materials; and

(f) determination of the kinds of equipment, inservice, and accounting necessary to implement the provisions of this part for the university system and community colleges.

History: En. Sec. 2, Ch. 622, L. 1991; amd. Sec. 22, Ch. 308, L. 1995.

20-32-103. Fee collection and disposition for operational costs. As a condition of participation in the network, the Montana university system and community colleges shall collect from appropriate discretionary funds in a manner approved by the board of regents an amount not to exceed \$5 for each full-time equivalent student enrolled in the units or colleges. The funds collected must be deposited with the commissioner of higher education for the purposes of 20-32-102(4). The commissioner of higher education shall pay the department of administration the commissioner's share of the network costs.

History: En. Sec. 3, Ch. 622, L. 1991; amd. Sec. 1, Ch. 547, L. 1993; amd. Sec. 23, Ch. 308, L. 1995; amd. Sec. 15, Ch. 243, L. 1997.

20-32-104. Apportionment of costs. The superintendent of public instruction and the commissioner of higher education shall share on a prorated basis according to the related student counts any costs incurred by the department of administration for the purposes of 20-32-102(3).

History: En. Sec. 4, Ch. 622, L. 1991.

TITLE 22

LIBRARIES, ARTS, AND ANTIQUITIES

CHAPTER 1

LIBRARIES

Part 3

Free Public Libraries

22-1-301. Definitions. Unless otherwise provided, the following definitions apply in this part:

- (1) "City" means city or town.
- (2) "Commission" means the state library commission.
- (3) "Public library" means a library created under 22-1-303 through 22-1-317 that provides library services to the public by means of central facilities, branch facilities, or bookmobiles.
- (4) "State multilibrary card" means a card that is issued to a Montana resident by a public library created under Title 7 or under 22-1-303 and that may be used for library services in every public library in the state.

History: En. Sec. 11, Ch. 260, L. 1967; R.C.M. 1947, 44-227; amd. Sec. 8, Ch. 670, L. 1989; amd. Sec. 1, Ch. 356, L. 1991.

22-1-302. Purpose. It is the purpose of this part to encourage the establishment, adequate financing, and effective administration of free public libraries in this state to give the people of Montana the fullest opportunity to enrich and inform themselves through reading.

History: En. Sec. 1, Ch. 260, L. 1967; R.C.M. 1947, 44-218.

22-1-303. Creation of public library. A public library may be established in any county or city in any of the following ways:

(1) The governing body of any county or city desiring to establish and maintain a public library may pass and enter upon its minutes a resolution to the effect that a free public library is established under the provision of Montana laws relating to public libraries.

(2) A public library may be established by a petition that is signed by not less than 10% of the resident taxpayers whose names appear upon the last-completed assessment roll of the city or county and that is filed with the governing body requesting the establishment of a public library. The governing body of a city or county shall set a time of meeting at which it may by resolution establish a public library. The governing body shall give notice of the contemplated action in a newspaper of general circulation for 2 consecutive weeks giving the date and place of the meeting at which the contemplated action is proposed to be taken.

(3) (a) Upon a petition being filed with the governing body and signed by not less than 5% of the resident taxpayers of any city or county requesting an election, the governing body shall submit to a vote of the qualified electors at the next general election the question of whether a free public library is to be established.

(b) If a petition is submitted for a city, the petition must be signed by resident taxpayers of the city.

(c) If a petition is submitted to the county commissioners of a county asking for the establishment of a county library, the petition must be signed by resident taxpayers of the county who reside outside the corporate limits of an incorporated city that is located in the county and that may already have established a free public library for the city.

(d) If the petition specifically asks that a special election be called and the petition is signed by 35% of the resident freeholders affected by the petition, then the governing body shall, upon receipt of the petition, immediately set a date for a special election. The special election must be held in conjunction with a regular or primary election.

(e) If at the election a majority of the electors voting on the question vote in favor of the establishment of a library, the governing body shall immediately take the necessary steps to

establish and maintain the library or to contract with any city or county for library service to be rendered to the inhabitants of the city or county.

History: En. Sec. 2, Ch. 260, L. 1967; amd. Sec. 1, Ch. 263, L. 1969; R.C.M. 1947, 44-219; amd. Sec. 65, Ch. 387, L. 1995.

22-1-304. Tax levy — special library fund — bonds. (1) Subject to 15-10-420, the governing body of a city or county that has established a public library may levy in the same manner and at the same time as other taxes are levied a tax in the amount necessary to maintain adequate public library service.

(2) (a) The governing body of a city or county may by resolution submit the question of imposing a tax levy to a vote of the qualified electors at an election as provided in 15-10-425. The resolution must be adopted at least 75 days prior to the election at which the question will be voted on.

(b) Upon a petition being filed with the governing body and signed by not less than 5% of the resident taxpayers of any city or county requesting an election for the purpose of imposing a mill levy, the governing body shall submit to a vote of the qualified electors at the next election or at a special election, as provided in 15-10-425, the question of imposing the mill levy. The petition must be delivered to the governing body at least 90 days prior to the election at which the question will be voted on.

(3) The proceeds of the tax constitute a separate fund called the public library fund and may not be used for any purpose except those of the public library.

(4) Money may not be paid out of the public library fund by the treasurer of the city or county except by order or warrant of the board of library trustees.

(5) Bonds may be issued by the governing body in the manner prescribed by law for the following purposes:

(a) building, altering, repairing, furnishing, or equipping a public library or purchasing land for the library;

(b) buying a bookmobile or bookmobiles; and

(c) funding a judgment against the library.

History: En. Sec. 3, Ch. 260, L. 1967; R.C.M. 1947, 44-220; amd. Sec. 1, Ch. 431, L. 1983; amd. Sec. 39, Ch. 250, L. 1985; amd. Sec. 1, Ch. 333, L. 1999; amd. Sec. 123, Ch. 584, L. 1999; amd. Sec. 31, Ch. 495, L. 2001; amd. Sec. 128, Ch. 574, L. 2001; amd. Sec. 16, Ch. 453, L. 2005.

22-1-305. Library depreciation reserve fund authorized. The governing body of any city or county or a combination of city and county in Montana may establish a library depreciation reserve fund for the replacement and acquisition of property, capital improvements, and equipment necessary to maintain and improve city, county, or city-county library services.

History: En. 44-229 by Sec. 1, Ch. 78, L. 1975; R.C.M. 1947, 44-229.

22-1-306. Moneys for library depreciation reserve fund. Moneys for the library depreciation reserve fund are those funds which have been allocated to the library in any year but which have not been expended by the end of the year. Such moneys include but are not limited to city or county or city-county appropriations, federal revenue sharing funds, and public and private grants.

History: En. 44-230 by Sec. 2, Ch. 78, L. 1975; R.C.M. 1947, 44-230.

22-1-307. Investment of fund. The moneys held in the library depreciation reserve fund may be invested as provided by law. All interest earned on the fund must be credited to the library depreciation reserve fund.

History: En. 44-231 by Sec. 3, Ch. 78, L. 1975; R.C.M. 1947, 44-231.

22-1-308. Public library — board of trustees. (1) Upon the establishment of a public library under the provisions of this part, the mayor, with the advice and consent of the city council or city commissioners, shall appoint a board of trustees for the city library and the chairman of the board of county commissioners, with the advice and consent of said board, shall appoint a board of trustees for the county library.

(2) The library board shall consist of five trustees. Not more than one member of the governing body shall be, at any one time, a member of such board.

(3) Trustees shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds.

(4) Trustees shall hold their office for 5 years from the date of appointment and until their successors are appointed. Initially, appointments shall be made for 1-, 2-, 3-, 4-, and 5-year terms. Annually thereafter, there shall be appointed before July 1 of each year in the same manner as the original appointments for a 5-year term, a trustee to take the place of the retiring trustee. Trustees shall serve no more than two full terms in succession.

(5) Following such appointments, in July of each year, the trustees shall meet and elect a chairman and such other officers as they deem necessary, for 1-year terms. Vacancies in the board of trustees shall be filled for the unexpired term in the same manner as original appointments.

History: En. Sec. 4, Ch. 260, L. 1967; R.C.M. 1947, 44-221.

22-1-309. Trustees — powers and duties. The library board of trustees shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library. The library board of trustees of every public library shall:

(1) adopt bylaws and rules for its own transaction of business and for the government of the library, not inconsistent with law;

(2) establish and locate a central public library and may establish branches thereof at such places as are deemed necessary;

(3) have the power to contract, including the right to contract with regions, counties, cities, school districts, educational institutions, the state library, and other libraries, to give and receive library service, through the boards of such regions, counties, and cities and the district school boards, and to pay out or receive funds to pay costs of such contracts;

(4) have the power to acquire, by purchase, devise, lease or otherwise, and to own and hold real and personal property in the name of the city or county or both, as the case may be, for the use and purposes of the library and to sell, exchange or otherwise dispose of property real or personal, when no longer required by the library and to insure the real and personal property of the library;

(5) pay necessary expenses of members of the library staff when on business of the library;

(6) prepare an annual budget, indicating what support and maintenance of the public library will be required from public funds, for submission to the appropriate agency of the governing body. A separate budget request shall be submitted for new construction or for capital improvement of existing library property.

(7) make an annual report to the governing body of the city or county on the condition and operation of the library, including a financial statement. The trustees shall also provide for the keeping of such records as shall be required by the Montana state library in its request for an annual report from the public libraries and shall submit such an annual report to the state library.

(8) have the power to accept gifts, grants, donations, devises, or bequests of property, real or personal, from whatever source and to expend or hold, work, and improve the same for the specific purpose of the gift, grant, donation, devise, or bequest. These gifts, grants, donations, devises, and bequests shall be kept separate from regular library funds and are not subject to reversion at the end of the fiscal year.

(9) exercise such other powers, not inconsistent with law, necessary for the effective use and management of the library.

History: Ap. p. Sec. 5, Ch. 260, L. 1967; Sec. 44-222, R.C.M. 1947; Ap. p. Sec. 1, Ch. 47, L. 1927; re-en. Sec. 5668.17, R.C.M. 1935; Sec. 11-1006, R.C.M. 1947; R.C.M. 1947, 11-1006(part), 44-222.

22-1-310. Chief librarian — personnel — compensation. The board of trustees of each library shall appoint and set the compensation of the chief librarian who shall serve as the secretary of the board and shall serve at the pleasure of the board. With the recommendation of the chief librarian, the board shall employ and discharge such other persons as may be necessary in the administration of the affairs of the library, fix and pay their salaries and compensation, and prescribe their duties.

History: En. Sec. 6, Ch. 260, L. 1967; R.C.M. 1947, 44-223.

22-1-311. Use of library — privileges. Every library established under the provisions of this part shall be free to the use of the inhabitants of the city or the county supporting such library. The board may exclude from the use of the library any and all persons who shall willfully violate the rules of the library. The board may extend the privileges and use of the library to persons residing outside of the city or county upon such terms and conditions as it may prescribe by its regulations.

History: En. Sec. 7, Ch. 260, L. 1967; R.C.M. 1947, 44-224.

22-1-312. Cooperation and merger. Library boards of trustees, boards of other educational institutions, library agencies, and local political subdivisions are hereby empowered to cooperate, merge, or combine in providing library service.

History: En. Sec. 8, Ch. 260, L. 1967; R.C.M. 1947, 44-225.

22-1-313. Existing tax-supported libraries — notification — exemption from county taxes. After the establishment of a county free library as provided in this part, the governing body of any city which has an existing tax-supported public library may notify the board of county commissioners that such city does not desire to be a part of the county library system. Such notification shall exempt the property in such city from liability for taxes for county library purposes.

History: En. Sec. 9, Ch. 260, L. 1967; R.C.M. 1947, 44-226.

22-1-314. Continued existence of all public libraries. All public libraries heretofore established shall continue in existence, subject to the changes in administration provided herein.

History: En. Sec. 12, Ch. 260, L. 1967; R.C.M. 1947, 44-228.

22-1-315. City library may assume functions of county library. (1) Instead of establishing a separate county free library, the board of county commissioners may enter into a contract with the board of library trustees or other authority in charge of the free public library of any incorporated city, and the board of library trustees or other authority in charge of such free public library is hereby authorized to make such a contract.

(2) Such contract may provide that the free public library of such incorporated city shall assume the functions of a county free library within the county with which such contract is made, and the board of county commissioners may agree to pay out of the county free library fund into the library fund of such incorporated city such sum as may be agreed upon.

(3) Either party to such contract may terminate the same by giving 6 months' notice of intention to do so.

History: En. Sec. 11, Ch. 45, L. 1915; re-en. Sec. 4573, R.C.M. 1921; re-en. Sec. 4573, R.C.M. 1935; R.C.M. 1947, 44-211.

22-1-316. Joint city-county library. (1) A county and any city or cities within the county, by action of their respective governing bodies, may join in establishing and maintaining a joint city-county library under the terms of a contract agreed upon by all parties.

(2) The expenses of a joint city-county library must be apportioned between or among the county and cities on the basis agreed upon in the contract.

(3) Subject to 15-10-420, the governing body of any city or county entering into a contract may levy a special tax as provided in 22-1-304 for the establishment and operation of a joint city-county library.

(4) The treasurer of the county or of a participating city within the county, as provided in the contract, has custody of the funds of the joint city-county library, and the other treasurers of the county or cities joining in the contract shall transfer quarterly to the designated treasurer all money collected for the joint city-county library.

(5) The contract must provide for the disposition of property upon dissolution of the joint city-county library.

History: En. Sec. 1, Ch. 273, L. 1973; R.C.M. 1947, 44-219.1; amd. Sec. 124, Ch. 584, L. 1999.

22-1-317. City-county library — board of trustees. (1) A joint city-county library shall be governed by a board of trustees composed of five members chosen as specified in the contract, with terms not to exceed 5 years.

(2) Trustees shall serve no more than two full terms in succession.

(3) Trustees shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds.

(4) Trustees shall meet and elect a chairman and such other officers as they consider necessary for 1-year terms.

(5) The board of trustees shall have the same powers and duties as the board of trustees of a city library or a county library.

History: En. Sec. 2, Ch. 273, L. 1973; amd. Sec. 3, Ch. 3, L. 1977; R.C.M. 1947, 44-219.2.

22-1-318 through 22-1-324 reserved.

22-1-325. Short title. Sections 22-1-325 through 22-1-331 may be cited as the “Information Access Montana Act”.

History: En. Sec. 1, Ch. 670, L. 1989.

22-1-326. State aid to public libraries. (1) As used in 22-1-326 through 22-1-331, “public library” means a library created under Title 7 or under 22-1-301 through 22-1-317.

(2) As provided in 22-1-325 through 22-1-329, the commission shall administer state aid to public libraries and public library districts created and operated under part 7 of this chapter. The purposes of state aid are to:

(a) broaden access to existing information by strengthening public libraries and public library districts;

(b) augment and extend services provided by public libraries and public library districts; and

(c) permit new types of library services based on local need.

(3) Money appropriated for the purposes of this section may not be used to supplant general operating funds of recipient public libraries or public library districts. The commission may withhold a distribution to a library or district that receives less support from a mill levy or local government appropriation than its average for the preceding 3 fiscal years if the decrease may reasonably be linked to money received or expected to be received under 22-1-325 through 22-1-329.

History: En. Sec. 2, Ch. 670, L. 1989; amd. Sec. 2, Ch. 356, L. 1991; amd. Sec. 1, Ch. 203, L. 2005.

22-1-327. State aid — per capita — per square mile. The commission shall distribute grants to public libraries and public library districts on a per capita and per square mile basis.

History: En. Sec. 3, Ch. 670, L. 1989; amd. Sec. 2, Ch. 203, L. 2005.

22-1-328. State interlibrary loan program — reimbursement — eligibility. (1) Each Montana library eligible for reimbursement under this section for participation in the statewide interlibrary loan program must be reimbursed according to the rules adopted by the commission.

(2) Libraries eligible for interlibrary loan reimbursement under this section include public libraries, libraries operated by public schools or school districts, libraries operated by public colleges or universities, libraries operated by public agencies for institutionalized persons, and libraries operated by nonprofit, private medical, educational, or research institutions.

(3) Notwithstanding subsections (1) and (2), the following types of interlibrary loans are not eligible for reimbursement:

(a) a loan between public school libraries located within the same public school district;

(b) a loan between an elementary school library and a high school library located within school districts with overlapping school district boundaries;

(c) a loan between libraries administered by a public or private, nonprofit college or university; and

(d) a loan between libraries administered by a public library.

History: En. Sec. 4, Ch. 670, L. 1989; amd. Sec. 1, Ch. 183, L. 1999.

22-1-329. State multilibrary card. The commission shall develop a program to allow Montana libraries to issue to residents a state multilibrary card as defined in 22-1-301.

History: En. Sec. 5, Ch. 670, L. 1989.

22-1-330. Commission rulemaking authority. The commission may adopt rules and procedures for:

(1) the distribution of state aid to public libraries and public library districts on a per capita and per square mile basis;

- (2) issuance of state multilibrary cards;
 - (3) reimbursement for interlibrary loan lending;
 - (4) distribution of base grants provided for in 22-1-331; and
 - (5) the composition of the library federation board of trustees, as provided in 22-1-404.
- History:** En. Sec. 6, Ch. 670, L. 1989; amd. Sec. 2, Ch. 183, L. 1999; amd. Sec. 3, Ch. 203, L. 2005.

22-1-331. Base grants. The commission shall provide a base grant for each public library to support the cooperative activities and services of the six library federations in the state.

History: En. Sec. 7, Ch. 670, L. 1989.

Part 11

Library Records Confidentiality Act

22-1-1101. Short title. This part may be cited as the “Montana Library Records Confidentiality Act”.

History: En. Sec. 1, Ch. 476, L. 1985.

22-1-1102. Definitions. As used in 22-1-1103, the following definitions apply:

(1) “Library” means a library that is established by the state, a county, city, town, school district, or a combination of those units of government, a college or university, or any private library open to the public.

(2) “Library records” means any document, record, or any other method of storing information retained, received, or generated by a library that identifies a person as having requested, used, or borrowed library material or other records identifying the names or other personal identifiers of library users. Library records does not include nonidentifying material that may be retained for the purpose of studying or evaluating the circulation of library materials in general or records that are not retained or retrieved by personal identifier.

History: En. Sec. 2, Ch. 476, L. 1985.

22-1-1103. Nondisclosure of library records. (1) No person may release or disclose a library record or portion of a library record to any person except in response to:

(a) a written request of the person identified in that record, according to procedures and forms giving written consent as determined by the library; or

(b) an order issued by a court of competent jurisdiction, upon a finding that the disclosure of such record is necessary because the merits of public disclosure clearly exceed the demand for individual privacy.

(2) A library is not prevented from publishing or making available to the public reasonable statistical reports regarding library registration and book circulation if those reports are presented so that no individual is identified therein.

(3) Library records may be disclosed to the extent necessary to return overdue or stolen materials or collect fines.

History: En. Sec. 3, Ch. 476, L. 1985.

22-1-1104 through 22-1-1110 reserved.

22-1-1111. Penalty. Any person who violates 22-1-1103 is guilty of a misdemeanor and is liable to the person identified in a record that is improperly released or disclosed. The person identified may bring a civil action for actual damages or \$100, whichever is greater. Reasonable attorney fees and the costs of bringing the action may be awarded to the prevailing party.

History: En. Sec. 6, Ch. 476, L. 1985.

TITLE 26

EVIDENCE

CHAPTER 1

STATUTORY PROVISIONS

ON EVIDENCE

Part 8

Privileges

26-1-801. Policy to protect confidentiality in certain relations. There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the cases enumerated in this part.

History: En.Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(part).

26-1-806. Speech-language pathologist, audiologist-client privilege. A speech-language pathologist or audiologist cannot, without the consent of his client, be examined in a civil action as to any communication made by the client to him.

History: En.Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(8); amd. Sec. 6, Ch. 413, L. 1989.

26-1-807. Psychologist-client privilege. The confidential relations and communications between a psychologist and his client shall be placed on the same basis as provided by law for those between an attorney and his client. Nothing in any act of the legislature shall be construed to require such privileged communications to be disclosed.

History: En. Sec. 12, Ch. 73, L. 1971; R.C.M. 1947, 66-3212.

26-1-808. Information gathered by psychology teachers and observers. Any person who is engaged in teaching psychology in any school or who, acting as such, is engaged in the study and observation of child mentality shall not, without the consent of the parent or guardian of such child being so taught or observed, testify in any civil action as to any information so obtained.

History: En.Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(6).

26-1-809. Confidential communications by student to employee of educational institution. A counselor, psychologist, nurse, or teacher employed by any educational institution cannot be examined as to communications made to him in confidence by a duly registered student of such institution. However, this provision shall not apply where consent has been given by the student, if not a minor, or, if he is a minor, by the student and his parent or legal guardian.

History: En.Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(7).

26-1-810. Confidential communications made to public officer. A public officer cannot be examined as to communications made to him in official confidence when the public interests would suffer by the disclosure.

History: En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(5).

26-1-813. Mediation — confidentiality — privilege — exceptions. (1) Mediation means a private, confidential, informal dispute resolution process in which an impartial and neutral third person, the mediator, assists disputing parties to resolve their differences. In the mediation process, decisionmaking authority remains with the parties and the mediator does not have authority to compel a resolution or to render a judgment on any issue. A mediator may encourage and assist the parties to reach their own mutually acceptable settlement by facilitating an exchange of information between the parties, helping to clarify issues and interests, ensuring that relevant information is brought forth, and assisting the parties to voluntarily resolve their dispute.

(2) Except upon written agreement of the parties and the mediator, mediation proceedings must be:

- (a) confidential;
- (b) held without a verbatim record; and
- (c) held in private.

(3) A mediator's files and records, with the exception of signed, written agreements, are closed to all persons unless the parties and the mediator mutually agree otherwise. Except as provided in subsection (5), all mediation-related communications, verbal or written, between the parties or from the parties to the mediator and any information and evidence presented to the mediator during the proceedings are confidential. The mediator's report, if any, and the information or recommendations contained in it, with the exception of a signed, written agreement, are not admissible as evidence in any action subsequently brought in any court of law or before any administrative agency and are not subject to discovery or subpoena in any court or administrative proceeding unless all parties waive the rights to confidentiality and privilege.

(4) Except as provided in subsection (5), the parties to the mediation and a mediator are not subject to subpoena by any court or administrative agency and may not be examined in any action as to any communication made during the course of the mediation proceeding without the consent of the parties to the mediation and the mediator.

(5) The confidentiality and privilege provisions of this section do not apply to information revealed in a mediation if disclosure is:

- (a) required by any statute;
- (b) agreed to by the parties and the mediator in writing, whether prior to, during, or subsequent to the mediation; or
- (c) necessary to establish a claim or defense on behalf of the mediator in a controversy between a party to the mediation and the mediator.

(6) Nothing in this section prohibits a mediator from conveying information from one party to another during the mediation, unless a party objects to disclosure.

History: En. Sec. 1, Ch. 481, L. 1999.

TITLE 32

FINANCIAL INSTITUTIONS

CHAPTER 1

BANKS AND TRUST COMPANIES

Part 1

General Provisions — Definitions

32-1-115. Student financial institution defined — obligations of minor — applicability of laws. (1) The term “student financial institution” means a financial institution that:

- (a) is operated as a high school education program;
 - (b) is adopted by a school district board of trustees;
 - (c) is advised by but not owned by one or more state-chartered or federally chartered financial institutions, limited to a state or national bank, a state or federal savings and loan association, a trust company, an investment company, or a state or federal credit union;
 - (d) is located on property owned by a high school district, as defined in 20-6-101, or a K-12 school district, as defined in 20-6-701;
 - (e) has as its customers only those students who are enrolled in the high school in which the institution is located; and
 - (f) has a written commitment from the school district board of trustees guaranteeing reimbursement of any depositor’s funds that are lost due to insolvency of the student financial institution.
- (2) The funds of a student financial institution are not school district or public funds for the purposes of any state law governing the use or investment of school district or other public funds.
- (3) To advise a student financial institution, a state-chartered bank, savings and loan association, trust company, investment company, or credit union shall provide written notice to the department of administration.
- (4) With regard to the operation of a student financial institution, the obligations of a minor pertaining to borrowing money, cashing checks, and making deposits have the same force and effect as though they were the obligations of a person over the age of majority.
- (5) Except as provided in 32-1-102, 32-1-402, and 32-3-106, a student financial institution established pursuant to this section is not subject to Title 32, chapters 1 through 3, or any other provision of state law that regulates banks, credit unions, other financial institutions, or currency exchanges.

History: En. Sec. 1, Ch. 340, L. 2003.

TITLE 37

PROFESSIONS AND OCCUPATIONS

CHAPTER 8

NURSING

Part 1

General

37-8-101. Purpose. To safeguard life and health, a person practicing or offering to practice:

- (1) professional nursing in this state shall submit evidence that the person is qualified to practice and is licensed as provided in this chapter;

(2) practical nursing in this state shall submit evidence that the person is qualified to practice and is licensed as provided in this chapter;

(3) as a medication aide in this state shall submit evidence that the person is qualified to practice and is licensed as provided in this chapter.

History: En. Sec. 1, Ch. 243, L. 1953; amd. Sec. 1, Ch. 291, L. 1967; R.C.M. 1947, 66-1221(part); amd. Sec. 1, Ch. 448, L. 2003; amd. Sec. 28, Ch. 126, L. 2005.

37-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advanced practice registered nurse" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the board pursuant to 37-8-202.

(2) "Board" means the board of nursing provided for in 2-15-1734.

(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) "Medication aide" means a person who in an assisted living facility uses standardized procedures in the administration of drugs, as defined in 37-7-101, that are prescribed by a physician, an advanced practice registered nurse with prescriptive authority, a dentist, an osteopath, or a podiatrist authorized by state law to prescribe drugs.

(5) "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a junior college, college, or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical institution or junior college.

(6) "Practice of nursing" embraces the practice of practical nursing and the practice of professional nursing.

(7) (a) "Practice of practical nursing" means the performance of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. The practice of practical nursing uses standardized procedures in the observation and care of the ill, injured, and infirm, in the maintenance of health, in action to safeguard life and health, and in the administration of medications and treatments prescribed by a physician, naturopathic physician, physician assistant, optometrist, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, naturopathic physician, physician assistant, optometrist, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

(b) These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.

(8) "Practice of professional nursing" means the performance of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health, the prevention, casefinding, and management of illness, injury, or infirmity, and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, naturopathic physicians, physician assistants, optometrists, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (8):

(a) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(b) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals.

History: En. Sec. 2, Ch. 243, L. 1953; amd. Sec. 2, Ch. 291, L. 1967; amd. Sec. 114, Ch. 350, L. 1974; amd. Sec. 1, Ch. 180, L. 1975; R.C.M. 1947, 66-1222; amd. Sec. 4, Ch. 248, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 504, L. 1989; amd. Sec. 1, Ch. 584, L. 1993; amd. Sec. 25, Ch. 308, L. 1995; amd. Sec. 1, Ch. 136, L. 1997; amd. Sec. 117, Ch. 483, L. 2001; amd. Sec. 12, Ch. 54, L. 2003; amd. Sec. 1, Ch. 317, L. 2003; amd. Sec. 2, Ch. 448, L. 2003; amd. Sec. 42, Ch. 467, L. 2005; amd. Sec. 12, Ch. 502, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 502 in definition of practice of practical nursing in second and third sentences near middle after "physician" inserted "naturopathic physician, physician assistant, optometrist"; in definition of practice of professional nursing in third sentence near middle after "physicians" inserted "naturopathic physicians, physician assistants, optometrists"; and made minor changes in style. Amendment effective October 1, 2007.

37-8-103. Exemptions — limitations on authority conferred. (1) This chapter may not be construed as prohibiting:

- (a) gratuitous nursing by friends or members of the family;
- (b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;
- (c) nursing assistance in the case of an emergency;
- (d) the practice of nursing by students enrolled in approved nursing education programs;
- (e) the practice of nursing in this state by any legally qualified nurse of another state whose engagement requires the nurse to accompany and care for a patient temporarily residing in this state during the period of one engagement not to exceed 6 months in length, provided that person does not represent to the public that the person is a nurse licensed to practice in this state;
- (f) the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency of the United States while in the discharge of that nurse's official duties;
- (g) nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any well-established religion or denomination by adherents of the religion or denomination;
- (h) nursing or care of a minor who is in the care of a licensed foster parent, to the same extent that the care may be provided by a parent or guardian;
- (i) the execution of a death sentence pursuant to 46-19-103;
- (j) nursing tasks delegated by licensed nurses to unlicensed persons according to rules adopted by the board; and
- (k) the provision of nutrition, inclusive of supplements and medications prescribed by a physician, an advanced practice registered nurse, or a physician assistant, to be administered to an individual through a gastrostomy or jejunostomy tube by a parent, guardian, foster parent, surrogate parent, other family member, or individual, regardless of compensation, who is authorized and trained by the individual receiving the nutrition, inclusive of supplements and prescribed medications, or who is authorized and trained by a parent, guardian, foster parent, surrogate parent, or other adult family member. The exemption in this subsection (1)(k) does not apply to provision of nutrition, inclusive of supplements and prescribed medications, in a licensed facility that provides skilled nursing care as provided in Title 50, chapter 5.

(2) This chapter may not be construed:

- (a) as conferring any authority to practice medicine, surgery, or any combination of medicine or surgery;
- (b) to confer any authority to practice any of the healing arts prescribed by law to be practiced in the state of Montana; or
- (c) to permit any person to undertake the treatment of disease by any of the methods employed in the healing arts unless the licensee has been qualified under the applicable law or laws licensing the practice of those professions or healing arts in the state of Montana.

(3) (a) This chapter may not be construed to apply to a personal assistant performing health maintenance activities and acting at the direction of a person with a disability.

(b) The following definitions apply to this subsection:

- (i) "Health care professional" means an individual licensed pursuant to Title 37 as a physician assistant, advanced practice registered nurse, registered nurse, or occupational therapist or a medical social worker working as a member of a case management team for the purposes of the home- and community-based services program of the department of public health and human services.

(ii) "Health maintenance activities" includes urinary systems management, bowel treatments, administration of medications, and wound care if the activities in the opinion of the physician or other health care professional for the person with a disability could be performed by the person if the person were physically capable and if the procedure may be safely performed in the home.

(iii) "Physician" means an individual licensed pursuant to Title 37, chapter 3.

History: En. Sec. 22, Ch. 243, L. 1953; amd. Sec. 7, Ch. 291, L. 1967; amd. Sec. 4, Ch. 101, L. 1977; R.C.M. 1947, 66-1242; amd. Sec. 1, Ch. 148, L. 1979; amd. Sec. 5, Ch. 248, L. 1981; amd. Sec. 2, Ch. 411, L. 1983; amd. Sec. 2, Ch. 584, L. 1993; amd. Sec. 2, Ch. 525, L. 1995; amd. Sec. 1, Ch. 454, L. 2001; amd. Sec. 5, Ch. 519, L. 2005.

CHAPTER 11 PHYSICAL THERAPY

Part 3 Licensing

37-11-301. License required for physical therapist and assistant — unauthorized representation as licensed therapist. (1) A person may not practice or purport to practice physical therapy without first obtaining a license under the provisions of this chapter.

(2) A person who is not licensed under this chapter as a physical therapist, whose license has been suspended or revoked, or whose license has lapsed and has not been revived and who uses the words or letters "L.P.T.", "Licensed Physical Therapist", "P.T.", "Physical Therapist", "R.P.T.", "Registered Physical Therapist", or any other letters, words, or insignia indicating or implying that the person is a licensed physical therapist or who in any way, orally or in writing or in print or by sign, directly or by implication, purports to be a physical therapist is guilty of a misdemeanor.

(3) A person who is not licensed as a physical therapist assistant in accordance with this chapter may not assist a physical therapist in the practice of physical therapy.

History: En. Sec. 11, Ch. 39, L. 1961; R.C.M. 1947, 66-2511; amd. Sec. 11, Ch. 491, L. 1979; amd. Sec. 5, Ch. 253, L. 1995.

CHAPTER 15 SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

Part 1 General

37-15-101. Purpose. The legislature declares it to be a policy of this state that in order to safeguard the public health, safety, and welfare and to protect the public from being misled by incompetent, unscrupulous, and unauthorized persons and to protect the public from unprofessional conduct by qualified speech-language pathologists and audiologists and to help ensure the availability of the highest possible quality speech-language pathology and audiology services to the people of this state with communicative disorders, it is necessary to provide regulatory authority over persons offering speech-language pathology or audiology services to the public.

History: En. 66-3901 by Sec. 1, Ch. 543, L. 1975; R.C.M. 1947, 66-3901; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 26, Ch. 472, L. 1997; amd. Sec. 1, Ch. 262, L. 2005.

37-15-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Association" means the Montana speech-language and hearing association.

(2) "Audiologist" means a person who practices audiology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is an audiologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words "audiologist", "audiology", "audiometrist", "audiometry", "audiological", "audiometrics", "hearing clinician", "hearing clinic", "hearing therapist", "hearing

therapy”, “hearing center”, “hearing aid audiologist”, or any similar title or description of services.

(3) “Audiology aide or assistant” means any person meeting the minimum requirements established by the board of speech-language pathologists and audiologists who works directly under the supervision of a licensed audiologist.

(4) “Board” means the board of speech-language pathologists and audiologists provided for in 2-15-1739.

(5) “Department” means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(6) “Practice of audiology” means nonmedical diagnosis, assessment, and treatment services relating to auditory and vestibular disorders as provided by board rule.

(7) “Practice of speech-language pathology” means nonmedical diagnosis, assessment, and treatment services relating to speech-language pathology as provided by board rule.

(8) “Speech-language pathologist” means a person who practices speech-language pathology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is a speech-language pathologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words “speech pathologist”, “speech pathology”, “speech correctionist”, “speech corrections”, “speech therapist”, “speech therapy”, “speech clinician”, “speech clinic”, “language pathologist”, “language pathology”, “voice therapist”, “voice therapy”, “voice pathologist”, “voice pathology”, “logopedist”, “logopedics”, “communicologist”, “communicology”, “aphasiologist”, “aphasiology”, “phoniatrist”, “language therapist”, “language clinician”, or any similar title or description of services or functions.

(9) “Speech-language pathology aide or assistant” means a person meeting the minimum requirements established by the board who works directly under the supervision of a licensed speech-language pathologist.

History: En. 66-3902 by Sec. 2, Ch. 543, L. 1975; R.C.M. 1947, 66-3902; amd. Sec. 11, Ch. 22, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 413, L. 1989; amd. Sec. 1, Ch. 93, L. 1993; amd. Sec. 56, Ch. 429, L. 1995; amd. Sec. 124, Ch. 483, L. 2001; amd. Sec. 2, Ch. 262, L. 2005.

37-15-103. Exemptions. (1) This chapter does not prevent a person licensed in this state under any other law from engaging in the profession or business for which that person is licensed.

(2) This chapter does not restrict or prevent activities of a speech-language pathology or audiology nature or the use of the official title of the position for which the activities were performed on the part of a speech-language pathologist or audiologist employed by federal agencies.

(3) Those persons performing activities described in subsection (2) who are not licensed under this chapter may perform those activities only within the confines of or under the jurisdiction of the organization in which they are employed and may not offer speech-language pathology or audiology services to the public for compensation over and above the salary they receive for performance of their official duties with organizations by which they are employed. However, without obtaining a license under this chapter, these persons may consult or disseminate their research findings and scientific information to other accredited academic institutions or governmental agencies. They also may offer lectures to the public for a fee without being licensed under this chapter.

(4) This chapter does not restrict the activities and services of a student in speech-language pathology or audiology from pursuing a course of study in speech-language pathology or audiology at an accredited or approved college or university or an approved clinical training facility. However, these activities and services must constitute a part of a supervised course of study, and a fee may not accrue directly or indirectly to the student. These students must be designated by the title “speech-language pathology or audiology intern”, “speech-language pathology or audiology trainee”, or a title clearly indicating the training status appropriate to the level of training.

(5) This chapter does not restrict a person from another state from offering speech-language pathology or audiology services in this state if the services are performed for not more than 5 days in any calendar year and if the services are performed in cooperation with a

speech-language pathologist or audiologist licensed under this chapter. However, by securing a temporary license from the board subject to limitations that the board may impose, a person not a resident of this state who is not licensed under this chapter but who is licensed under the law of another state that has established licensure requirements at least equivalent to those established by this chapter may offer speech-language pathology or audiology services in this state for not more than 30 days in any calendar year if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter.

(6) This chapter does not restrict a person holding a class A certificate issued by the conference of executives of American schools of the deaf from performing the functions for which the person qualifies.

(7) This chapter does not restrict a person who holds a certificate of registration in this state as a hearing aid dealer from performing the functions for which the person qualifies and that are described in Title 37, chapter 16.

(8) This chapter does not exempt an audiologist who sells, dispenses, or fits hearing aids from the licensing requirements or other provisions of Title 37, chapter 16.

History: En. 66-3904 by Sec. 4, Ch. 543, L. 1975; R.C.M. 1947, 66-3904; amd. Sec. 3, Ch. 413, L. 1989; amd. Sec. 1, Ch. 367, L. 1999; amd. Sec. 3, Ch. 262, L. 2005.

Part 3 Licensing

37-15-301. License required. (1) A license shall be issued to qualified persons either in speech-language pathology or audiology. A person may be licensed in both areas if he meets the respective qualifications, and in such instances the license fee shall be as though for one license.

(2) No person may practice or represent himself as a speech-language pathologist or audiologist in this state unless he is licensed in accordance with the provisions of this chapter.

History: En. 66-3903 by Sec. 3, Ch. 543, L. 1975; R.C.M. 1947, 66-3903; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 2, Ch. 367, L. 1999.

CHAPTER 23 PROFESSIONAL COUNSELING

Part 2 Licensing

37-23-201. Representation or practice as licensed clinical professional counselor — license required. (1) Upon issuance of a license in accordance with this chapter, a licensee may use the title “licensed clinical professional counselor” or “professional counselor”.

(2) Except as provided in subsection (3), a person may not represent that the person is a licensed professional counselor or licensed clinical professional counselor by adding the letters “LPC” or “LCPC” after the person’s name or by any other means, engage in the practice of professional counseling, or represent that the person is engaged in the practice of professional counseling, unless licensed under this chapter.

(3) Individuals licensed in accordance with this chapter before October 1, 1993, who use the title “licensed professional counselor” or “LPC” may use the title “licensed clinical professional counselor” or “LCPC”.

(4) Subsection (2) does not prohibit:

(a) a qualified member of another profession, such as a physician, lawyer, pastoral counselor, probation officer, court employee, nurse, school counselor, educator, chemical dependency counselor accredited by a federal agency, or addiction counselor licensed pursuant to Title 37, chapter 35, from performing duties and services consistent with the person’s licensure or certification and the code of ethics of the person’s profession or, in the case of a qualified member of another profession who is not licensed or certified or for whom there is no applicable code of ethics, from performing duties and services consistent with the person’s training, as long as the person does not represent by title that the person is engaging in the practice of professional counseling;

(b) an activity or service or use of an official title by a person employed by or acting as a volunteer for a federal, state, county, or municipal agency or an educational, research, or charitable institution that is a part of the duties of the office or position;

(c) an activity or service of an employee of a business establishment performed solely for the benefit of the establishment's employees;

(d) an activity or service of a student, intern, or resident in mental health counseling pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activity or service constitutes a part of the supervised course of study;

(e) an activity or service of a person who is not a resident of this state, which activity or service is rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year, if the person is authorized under the law of the state or country of residence to perform the activity or service. However, the person shall report to the department of labor and industry the nature and extent of the activity or service if it exceeds 10 days in a calendar year.

(f) pending disposition of the application for a license, the activity or service by a person who has recently become a resident of this state, has applied for a license within 90 days of taking up residency in this state, and is licensed to perform the activity or service in the state of the person's former residence;

(g) an activity or service of a person who is working to satisfactorily complete the 3,000 hours of counseling practice required for licensure by 37-23-202(1)(b) if the person has already completed a planned graduate program, as required by 37-23-202(1)(a), or is working to complete the 3,000 hours of social work experience as required by 37-22-301; or

(h) an activity or service performed by a licensed social worker, licensed psychiatrist, or licensed psychologist when performing the activity or service in a manner consistent with the person's license and the code of ethics of the person's profession.

History: En. Sec. 4, Ch. 572, L. 1985; amd. Sec. 9, Ch. 552, L. 1993; amd. Sec. 2, Ch. 536, L. 1995; amd. Sec. 12, Ch. 507, L. 1997; amd. Sec. 4, Ch. 23, L. 2001; amd. Sec. 130, Ch. 483, L. 2001.

CHAPTER 24 OCCUPATIONAL THERAPY

Part 3 Licensing

37-24-301. License required. (1) (a) No person may hold himself out as an occupational therapist or as being able to practice occupational therapy or able to render occupational therapy services in this state unless he is licensed as an occupational therapist under the provisions of this chapter.

(b) No person may practice or hold himself out as an occupational therapy assistant in this state unless he is licensed as an occupational therapist or as an occupational therapy assistant.

(2) Only an individual may be licensed under this chapter.

History: En. Sec. 9, Ch. 629, L. 1985.

CHAPTER 25 NUTRITIONISTS

Part 3 Licensing

37-25-302. Licensing requirements. (1) An applicant for licensure as a licensed nutritionist shall file a written application with the board and demonstrate to the board that he is registered by the commission.

(2) An applicant shall pay an application fee, set by the board.

History: En. Sec. 4, Ch. 529, L. 1987.

CHAPTER 36 ATHLETIC TRAINERS

Part 1 General

37-36-101. Definitions. As used in this chapter, the following definitions apply:

(1) “Athlete” means a person who participates in an athletic activity that involves exercises, sports, or games requiring physical strength, agility, flexibility, range of motion, speed, or stamina and the exercises, sports, or games are of the type conducted in association with an educational institution or a professional, amateur, or recreational sports club or organization.

(2) “Athletic injury” means a physical injury received by an athlete.

(3) “Athletic trainer” means an individual who is licensed to practice athletic training.

(4) “Athletic training” means the practice of prevention, recognition, assessment, management, treatment, disposition, and reconditioning of athletic injuries. The term includes the following:

(a) the use of heat, light, sound, cold, electricity, exercise, reconditioning, or mechanical devices related to the care and conditioning of athletes; and

(b) the education and counseling of the public on matters related to athletic training.

(5) “Board” means the board of athletic trainers provided for in 2-15-1771.

(6) “Department” means the department of labor and industry provided for in 2-15-1701.

(7) “Licensee” means an individual licensed under this chapter.

History: En. Sec. 2, Ch. 388, L. 2007.

37-36-102. Board duties — rulemaking. (1) The board shall meet at least twice a year for the purposes provided in Title 37, chapter 1, and this chapter.

(2) The board shall adopt rules necessary to implement the provisions of this chapter.

History: En. Sec. 3, Ch. 388, L. 2007.

Part 2 Regulations — Penalties

37-36-201. Qualifications — temporary license — exemption from examination.

(1) Applicants for licensure as an athletic trainer shall:

(a) satisfactorily complete an application and an examination prescribed by the department in accordance with rules adopted by the board;

(b) pay application, examination, and licensure fees established by the board;

(c) provide documentation that the applicant has received at least a baccalaureate degree from a postsecondary institution that meets the academic standards for athletic trainers established by the national athletic trainers’ association board of certification;

(d) provide the board with letters of recommendation from at least two clinical supervisors familiar with the applicant’s clinical training and other documentation by which the board may determine that an applicant has not had a criminal conviction or disciplinary action taken against the applicant by a board or a licensing agency in another state or territory of the United States that may have a direct bearing on the applicant’s ability to practice athletic training competently.

(2) (a) The board may issue a temporary license to an applicant who:

(i) meets the qualifications in subsections (1)(b) through (1)(d) but has not yet met the examination requirement in subsection (1)(a); or

(ii) has a valid license from another state or certification as provided in subsection (3)(a) or (3)(b).

(b) A temporary license issued under this section is valid after the date of issuance for 90 days or until the board acts on the person’s license application, whichever is earlier.

(3) An applicant may be exempted from the examination requirement in subsection (1)(a) if the applicant:

(a) has a current, valid license to practice athletic training in another state and that state's standards, as determined by the board, are at least equal to the standards for licensure in this state; or

(b) is certified as an athletic trainer by an organization recognized by the national commission for certifying agencies.

History: En. Sec. 4, Ch. 388, L. 2007.

37-36-202. License — revocation. (1) Except as provided in subsection (2), a license issued under this chapter is valid for 3 years.

(2) The board may revoke a license if a licensee knowingly:

(a) provided fraudulent information on the application or documentation required in 37-36-201;

(b) violated standards of conduct as prescribed by the board; or

(c) engaged in practices beyond the scope and limitation of the person's training and education as determined by the board.

History: En. Sec. 5, Ch. 388, L. 2007.

37-36-203. Representation to public — practice — exemptions. (1) (a) Except as provided in subsection (2), an individual may not practice athletic training without a license.

(b) Upon issuance of a license in accordance with this chapter, a licensee may use the title "licensed athletic trainer" or "certified athletic trainer" and may use the abbreviations "LAT" or "AT" indicating that the individual is licensed in the practice of athletic training. A person who is not licensed may not use the titles listed in this subsection (1)(b). Except for an individual listed in subsection (2)(a), an individual who is not certified or licensed as an athletic trainer may not advertise for athletic training services.

(2) This section does not prohibit:

(a) a health care professional licensed under Title 37, chapter 3, 6, 8, 11, 12, 20, 24, or 26, from practicing an occupation or profession for which the health care professional is licensed or from practicing on an athlete;

(b) an educator or an information specialist from providing general information regarding prevention of athletic injuries;

(c) an individual from providing a first aid procedure incidental to the individual's employment or volunteer duties;

(d) an intern or student trainee studying a course of athletic training at an accredited postsecondary institution from providing athletic training under qualified supervision as part of the intern or student trainee's course of study. The intern or student trainee shall use the title "athletic training student" while carrying out athletic training activities.

(e) a personal trainer from providing personal training services;

(f) a massage therapist from providing massage; or

(g) a coach, physical education teacher, athletic director, other school employee, or supervised volunteer from providing first aid, preventative care, or continuous followup care of athletes and athletic injuries in a school setting.

History: En. Sec. 6, Ch. 388, L. 2007.

37-36-204. Application and administration of topical medications. (1) A licensed athletic trainer may apply or administer topical medications by:

(a) direct application;

(b) iontophoresis, a process by which topical medications are applied through the use of electricity; or

(c) phonophoresis, a process by which topical medications are applied through the use of ultrasound.

(2) A licensed athletic trainer may apply or administer the following topical medications:

(a) bactericidal agents;

(b) debriding agents;

(c) anesthetic agents;

(d) anti-inflammatory agents;

(e) antispasmodic agents; and

(f) adrenocorticosteroids.

(3) Topical medications applied or administered by a licensed athletic trainer must be prescribed on a specific or standing basis by a licensed medical practitioner authorized to order or prescribe topical medications and must be purchased from a pharmacy certified under 37-7-321. Topical medications dispensed under this section must comply with packaging and labeling guidelines developed by the board of pharmacy under Title 37, chapter 7.

(4) Appropriate recordkeeping is required of a licensed athletic trainer who applies or administers topical medications as authorized in this section.

History: En. Sec. 7, Ch. 388, L. 2007.

37-36-205. Violation — penalties. A person who knowingly violates any provision of this chapter is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$50 or more than \$500, by imprisonment in the county jail for a term of not less than 30 days or more than 6 months, or by both fine and imprisonment.

History: En. Sec. 8, Ch. 388, L. 2007.

CHAPTER 48 PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS

Part 1 General Provisions

37-48-101. Purpose. The purpose of the board is to license and regulate private alternative adolescent residential or outdoor programs as a public service to monitor and maintain a high standard of care and to ensure the safety and well-being of the adolescents and parents using the programs. Necessary licensure processes and safety standards for programs are best developed and monitored by the professionals that are actively engaged in providing private alternative adolescent residential care.

History: En. Sec. 2, Ch. 294, L. 2005; amd. Sec. 7, Ch. 178, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 178 in first sentence near beginning substituted "license and regulate" for "examine the benefit of licensing". Amendment effective April 10, 2007.

37-48-102. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of private alternative adolescent residential or outdoor programs provided for in 2-15-1745.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Direct access" means that an individual has or will likely have person-to-person spoken contact or physical contact with or access to the program participant.

(4) "Manager" means an individual who has or will likely have person-to-person spoken contact or physical contact with or access to the program participant.

(5) "Plan of operation" means the operational structures and parameters describing the program as identified in 37-48-103 and as required by the board by rule.

(6) (a) "Program" means a private alternative adolescent residential or outdoor program that provides a structured, private, alternative residential setting for youth who are experiencing emotional, behavioral, or learning problems and who have a history of failing in academic, social, moral, or emotional development at home or in less-structured traditional settings.

(b) The term does not include:

(i) any program that is required to be licensed or regulated by the state under Title 50, 52, or 53;

(ii) recreational programs such as boy scouts, girl scouts, or 4-H clubs;

(iii) organizations, boarding schools, or residential schools with a sole focus on academics;

(iv) residential training or vocational programs with a sole focus on education and vocational training;

(v) youth camps with a focus on recreation and faith-related activities; or

(vi) an organization, boarding school, or residential school that is an adjunct ministry of a church incorporated in the state of Montana.

(7) “Program participant” means an adolescent enrolled in or participating in a program, other than an adolescent serving as an employee of the program.

(8) “Worker affiliated with the program” means any owner, partner, member, employee, or contractor providing professional or occupational services to a program.

History: En. Sec. 3, Ch. 294, L. 2005; amd. Sec. 8, Ch. 178, L. 2007.

Compiler’s Comments

2007 Amendment: Chapter 178 inserted definitions of direct access, manager, plan of operation, program participant, and worker affiliated with the program; and made minor changes in style. Amendment effective April 10, 2007.

37-48-103. Registration and licensing requirements — fees. (1) The board shall develop and adopt rules and set fees for mandatory registration and licensing programs. Each program is required to provide policies of insurance in a form and in an adequate amount as determined by board rule.

(2) The board shall require the following information to be provided for licensing. The information includes but is not limited to:

- (a) a description of the program and facility;
- (b) a description of the goals and objectives of the program for program participants;
- (c) a description of the population served by the program, including the maximum number of program participants to be served and the gender of program participants;
- (d) the location and contact information for each program, including the person responsible for the conduct of the program;
- (e) a list of professional and supervisory employees and relevant credentials and other qualifications;
- (f) the average daily census;
- (g) a copy of program policies and procedures on:
 - (i) admission;
 - (ii) behavior management;
 - (iii) communication with family members;
 - (iv) the availability of routine and emergency medical and psychological care;
 - (v) medication management;
- (h) any information that the board may require to facilitate a fingerprint and background check by the department of justice and the federal bureau of investigation of a manager or a worker affiliated with the program who has direct access to program participants, including information pertaining to criminal convictions; and
- (i) any other related information specified by the board by rule.

(3) The board shall issue licenses upon receipt of the appropriate fees and a finding that the information provided in subsection (2) is satisfactory. The board shall make available to the public information on the name, address, and contact information for each licensed program.

History: En. Sec. 4, Ch. 294, L. 2005; amd. Sec. 9, Ch. 178, L. 2007.

Compiler’s Comments

2007 Amendment: Chapter 178 in (1) in first sentence near middle substituted “and adopt rules and set fees for mandatory registration and licensing” for “and implement a process for registration of” and at end deleted “and to set fees to carry out its duties under this section” and inserted second sentence concerning insurance; deleted former (2) that read: “(2) The board shall:

- (a) examine data gathered from the registration process;
- (b) examine current regulations and standards applicable to these programs;
- (c) determine additional regulations and standards that are needed;
- (d) examine the quality of child care available in the various programs, any aspects of existing programs that need improvement, and the positive contributions to or negative interactions with local communities;
- (e) determine the need for the continued existence of the board and its duties or responsibilities; and
- (f) report to the economic affairs interim committee detailing the board’s findings, recommendations, and proposed legislation, if any, by September 15, 2006”; in (2) in first sentence near beginning after “require” inserted “the following” and at end substituted “licensing” for “registration of programs”; inserted (2)(b) concerning goals and objectives; in (2)(c) at end inserted “including the maximum number of program participants to be served and the gender of program participants”; inserted (2)(h) concerning information to facilitate fingerprint and background checks; inserted (2)(i) concerning other related information; in (3) substituted first sentence concerning issuing license for former first two sentences that read: “The board shall adopt rules to determine any additional information necessary for registration. Registration must be updated annually. The board may set fees as provided in 37-1-134 that may be commensurate with program size” and at end of second sentence substituted “licensed” for “registered”; deleted former (5) that read: “(5) The board is exempt from the provisions in 37-1-105, 37-1-136, 37-1-137, 37-1-138,

37-1-141, and Title 37, chapter 1, parts 2 and 3"; and made minor changes in style. Amendment effective April 10, 2007.

37-48-104 and 37-48-105 reserved.

37-48-106. Licensure. (1) A program must be licensed by the board.

(2) The board may issue a license that is valid for a period of between 1 year and 3 years or may issue a provisional license as provided in 37-48-107.

(3) A license is valid only for the program for which it is issued and may not be sold, assigned, or transferred without the approval of the board.

(4) The board may suspend or revoke a license if the board, upon a hearing, as provided in 37-1-131, determines that the program is not operated in a manner consistent with the rules adopted and is not in substantial compliance with the program's plan of operation.

(5) The board may approve a modification of the program's plan of operation. A program may not deviate from its plan of operation without the prior approval of the board.

(6) A license terminates and the holder of the program license shall return the license to the department if:

- (a) program operations are discontinued;
- (b) ownership of the program is transferred without approval of the board;
- (c) the board suspends or revokes the license; or
- (d) the license expires without being renewed.

(7) The program license must be displayed in a conspicuous place near the admitting office of the program.

History: En. Sec. 1, Ch. 178, L. 2007.

Compiler's Comments

Effective Date: Section 11, Ch. 178, L. 2007, provided: "[This act] is effective on passage and approval." Approved April 10, 2007.

37-48-107. Provisional license. (1) The board may grant a provisional license to a program:

- (a) that was registered with the board as of December 31, 2006; and
- (b) that has submitted to the board:
 - (i) a completed application;
 - (ii) background materials, as described in 37-48-108, necessary to conduct background investigations on the program's managers and workers affiliated with the program; and
 - (iii) the required fees.

(2) A provisional license allows a program to operate for a period of up to 1 year, pending an onsite inspection of the program's facilities and the completion of background investigations on all managers and workers affiliated with the program who have direct access to program participants.

(3) The board may terminate a provisional license by notifying the program of any of the following:

- (a) the program's failure to pass the onsite inspection;
- (b) the program's failure to provide timely background materials for investigation of all managers and workers affiliated with the program who have direct access to program participants; or
- (c) the determination that one or more of the workers affiliated with the program with direct access to program participants are considered unsuitable, based on background information, for having direct access to program participants although the program upon notification may take corrective action within 30 days.

(4) If the program shows good cause, the board may extend a provisional license to complete background investigations on managers and workers affiliated with the program.

(5) The board may decline to grant a provisional license or a license to a program that the board determines is substantially the same in ownership, management, and plan of operation as a program that had previously been denied a provisional license or a license.

History: En. Sec. 2, Ch. 178, L. 2007.

Compiler's Comments

Effective Date: Section 11, Ch. 178, L. 2007, provided: "[This act] is effective on passage and approval." Approved April 10, 2007.

37-48-108. Background investigations — waiver. (1) The program shall submit background checks for the program manager and each worker affiliated with the program who has or will have direct access to program participants in a manner prescribed by the board or shall provide to the board the information necessary for the board to conduct a background investigation, including a set of fingerprints as required for a fingerprint check by the department of justice and the federal bureau of investigation.

(2) For the purposes of the background investigation required by this section, each individual subject to subsection (1) must be evaluated pursuant to the provisions of Title 37, chapter 1, part 2.

(3) The board may, by rule, identify specific criminal offenses for which a conviction disqualifies a worker affiliated with the program and procedures for disqualification based upon substantiated child abuse or neglect of children.

(4) (a) The board may, by rule, waive the requirement for a background investigation for an individual who holds a professional or occupational license granted by the state that is not suspended or restricted by action of the appropriate licensing entity.

(b) The board may grant a waiver of the background investigation upon a determination that the class or type of licensure referenced in subsection (4)(a):

(i) subjects the individual to at least as rigorous a background investigation as required by this section; and

(ii) contains provisions disqualifying applicants for a professional or occupational license that are similar to the provisions in subsection (3) and that are specified by the board by rule as disqualifying an individual whose job requires direct access to a program participant.

History: En. Sec. 3, Ch. 178, L. 2007.

Compiler's Comments

Effective Date: Section 11, Ch. 178, L. 2007, provided: "[This act] is effective on passage and approval." Approved April 10, 2007.

37-48-109 through 37-48-112 reserved.

37-48-113. Rules — program criteria — application evaluations. (1) The board shall adopt rules establishing specific minimum criteria to ensure the health and safety of program participants and other rules necessary to implement this part. Those criteria may incorporate by reference appropriate standards established by other governmental entities, including:

(a) building codes for those structures used as a residence for program participants;

(b) health and sanitation requirements; and

(c) other standards adopted by the board by rule.

(2) The board shall evaluate each application for a license to determine whether the proposed plan of operation:

(a) meets the specific minimum criteria set by rule;

(b) reasonably provides for the safety and well-being of program participants; and

(c) is consistent with the goals and objectives stated in the plan of operation.

(3) The board shall adopt rules by October 1, 2008, to begin licensing the programs, and the programs have 30 days from the effective date to apply for a license once the rules are effective.

History: En. Sec. 4, Ch. 178, L. 2007.

Compiler's Comments

Effective Date: Section 11, Ch. 178, L. 2007, provided: "[This act] is effective on passage and approval." Approved April 10, 2007.

37-48-114 reserved.

37-48-115. Department or board inspection. (1) The department or board may enter and inspect, without prior notice, program premises and facilities in response to a complaint. The inspection may be for purposes of determining compliance with the provisions of this part or for other purposes provided for by rule.

(2) The department or board may enlist the assistance of other governmental entities in inspections, including but not limited to a county health officer or a county sanitarian.

(3) (a) Except as provided in subsection (3)(b), the department or board shall conduct an onsite inspection of:

(i) each program applying for a license; and

(ii) each licensed program at least once every 3 years.

(b) Instead of an onsite inspection of a licensed program, the department or board may consider verified proof of successful certification by a national or regional certifying organization approved by the board by rule.

History: En. Sec. 5, Ch. 178, L. 2007.

Compiler's Comments

Effective Date: Section 11, Ch. 178, L. 2007, provided: "[This act] is effective on passage and approval." Approved April 10, 2007.

37-48-116 and 37-48-117 reserved.

37-48-118. Penalty for failure to obtain license — notice of violation. (1) It is unlawful to operate a program without a license or a provisional license. A person who maintains or operates a program in violation of this section is guilty of a misdemeanor punishable under 46-18-212. Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

(2) If the department receives a complaint or information alleging a violation of this part, the department may serve written notice to the program management either in person or by certified mail. The notice must inform the program management of the right to a hearing and whether injunctive action is being sought. The notice may also recommend corrective action to achieve voluntary compliance and a schedule for completing the corrective action if the program prefers to take corrective action rather than proceed to a contested case hearing.

History: En. Sec. 6, Ch. 178, L. 2007.

Compiler's Comments

Effective Date: Section 11, Ch. 178, L. 2007, provided: "[This act] is effective on passage and approval." Approved April 10, 2007.

TITLE 39

LABOR

CHAPTER 2

THE EMPLOYMENT RELATIONSHIP

Part 2

General Obligations of Employers

39-2-215. Public employer policy on support of women and breastfeeding — unlawful discrimination. (1) All state and county governments, municipalities, and school districts and the university system must have a written policy supporting women who want to continue breastfeeding after returning from maternity leave. The policy must state that employers shall support and encourage the practice of breastfeeding, accommodate the breastfeeding-related needs of employees, and ensure that employees are provided with adequate facilities for breastfeeding or the expression of milk for their children. At a minimum, the policy must identify the means by which an employer will make available a space suitable for breastfeeding and breast pumping for a lactating employee, including the provision of basic necessities of privacy, lighting, and electricity for the pump apparatus. The space does not need to be fully enclosed or permanent, but must be readily available during the term that the employee needs the space.

(2) It is an unlawful discriminatory practice for any public employer:

(a) to refuse to hire or employ or to bar or to discharge from employment an employee who expresses milk in the workplace; or

(b) to discriminate against an employee who expresses milk in the workplace in compensation or in terms, conditions, or privileges of employment unless based upon a bona fide occupational qualification.

History: En. Sec. 1, Ch. 290, L. 2007.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

39-2-216. Private place for nursing mothers. (1) All state and county governments, municipalities, and school districts and the university system shall make reasonable efforts to provide a room or other location in close proximity to the work area, other than a toilet stall, where an employee can express the employee's breast milk as provided in 39-2-215.

(2) All public employers are encouraged to establish policies to allow mothers who wish to continue to breastfeed after returning to work to have privacy in order to express milk and to provide facilities for milk storage.

History: En. Sec. 2, Ch. 290, L. 2007.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

39-2-217. Break time for nursing mothers. All state and county governments, municipalities, and school districts and the university system shall provide reasonable unpaid break time each day to an employee who needs to express breast milk for the employee's child, as provided in 39-2-215 and 39-2-216, if breaks are currently allowed. If breaks are not currently allowed, the public employer shall consider each case and make accommodations as possible. The break time must, if possible, run concurrently with any break time already provided to the employee. A public employer is not required to provide break time under this section if to do so would unduly disrupt the public employer's operations.

History: En. Sec. 3, Ch. 290, L. 2007.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

CHAPTER 4 HOURS OF LABOR IN CERTAIN EMPLOYMENTS

Part 1 Hours of Labor — Penalties and Liability for Violations Thereof

39-4-107. State and municipal governments, school districts, mines, mills, and smelters. (1) A period of 8 hours constitutes a day's work in all works and undertakings carried on or aided by any municipal or county government, the state government, or a first-class school district, and on all contracts let by them, and for all janitors (except in courthouses of sixth- and seventh-class counties), engineers, firefighters, caretakers, custodians, and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by such municipal, county, or state government or first-class school district. A period of 8 hours constitutes a day's work in mills and smelters for the treatment of ores, in underground mines, and in the washing, reducing, and treatment of coal. This subsection does not apply in the event of an emergency when life or property is in imminent danger or to the situations specified in subsections (3) and (4).

(2) The provisions of subsection (1) do not apply to firefighters who are working a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative.

(3) In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees or their duly constituted representative, establish a 40-hour workweek consisting of 4 consecutive 10-hour days. No employee may be required to work in excess of 8 hours in any one workday if he prefers not to.

(4) In municipal and county governments, the employer and employee may agree to a workday of more than 8 hours and to a 7-day, 40-hour work period:

(a) through a collective bargaining agreement when a collective bargaining unit represents the employee; or

(b) by the mutual agreement of the employer and employee when no bargaining unit is recognized.

History: (1) thru (3) En. Sec. 1, Ch. 50, L. 1905; amd. Sec. 1, Ch. 108, L. 1907; re-en. Sec. 1739, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1917; re-en. Sec. 3079, R.C.M. 1921; Cal. Pol. C. Secs. 3244, 3245; amd. Sec. 2, Ch. 116, L.

1929; re-en. Sec. 3079, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1943; amd. Sec. 1, Ch. 244, L. 1957; amd. Sec. 1, Ch. 395, L. 1975; Sec. 41-1121, R.C.M. 1947; (4) En. Sec. 2, Ch. 50, L. 1905; amd. Sec. 2, Ch. 108, L. 1907; re-en. Sec. 1740, Rev. C. 1907; re-en. Sec. 3080, R.C.M. 1921; amd. Sec. 3, Ch. 116, L. 1929; re-en. Sec. 3080, R.C.M. 1935; Sec. 41-1122, R.C.M. 1947; R.C.M. 1947, 41-1121, 41-1122; amd. Sec. 22, Ch. 397, L. 1979; amd. Sec. 2, Ch. 375, L. 1983; amd. Sec. 2, Ch. 640, L. 1983.

CHAPTER 29 VETERANS' PUBLIC EMPLOYMENT PREFERENCE

Part 1 General Provisions

39-29-101. Definitions. For the purposes of this chapter, the following definitions apply:

- (1) "Armed forces" means the:
 - (a) United States army, navy, air force, marine corps, and coast guard;
 - (b) merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the department of veterans affairs; and
 - (c) Montana army and air national guard.
- (2) "Disabled veteran" means a person:
 - (a) whether or not the person is a veteran who was separated under honorable conditions from military duty in the armed forces and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or a pension because of a law administered by the department of veterans affairs, a military department, or the state of Montana; or
 - (b) who has received a purple heart medal.
- (3) "Eligible relative" means:
 - (a) the unmarried surviving spouse of a veteran or disabled veteran;
 - (b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;
 - (c) the mother of a veteran who died under honorable conditions while serving in the armed forces if:
 - (i) the mother's spouse is totally and permanently disabled; or
 - (ii) the mother is the widow of the father of the veteran and has not remarried;
 - (d) the mother of a service-connected permanently and totally disabled veteran if:
 - (i) the mother's spouse is totally and permanently disabled; or
 - (ii) the mother is the widow of the father of the veteran and has not remarried.
 - (4) "Military duty" means duty with military pay and allowances in the armed forces.
 - (5) (a) "Position" means a position occupied by a permanent, temporary, or seasonal employee, as defined in 2-18-101, for the state or a similar permanent, temporary, or seasonal employee with a public employer other than the state.
 - (b) The term does not include:
 - (i) a state or local elected office;
 - (ii) appointment by an elected official to a body, such as a board, commission, committee, or council;
 - (iii) appointment by an elected official to a public office if the appointment is provided for by law;
 - (iv) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government;
 - (v) engagement as an independent contractor or employment by an independent contractor; or
 - (vi) a position occupied by a student intern, as defined in 2-18-101.
 - (6) "Public employer" means:
 - (a) a department, office, board, bureau, commission, agency, or other instrumentality of the executive, legislative, or judicial branches of the government of this state;
 - (b) a unit of the Montana university system;

(c) a school district or community college; and

(d) a county, city, or town.

(7) “Scored procedure” means a written test, structured oral interview, performance test, or other selection procedure or a combination of these procedures that results in a numerical score to which percentage points may be added.

(8) (a) “Under honorable conditions” means a discharge or separation from military duty characterized by the armed forces as under honorable conditions. The term includes honorable discharges and general discharges.

(b) The term does not include dishonorable discharges or other administrative discharges characterized as other than honorable.

(9) “Veteran” means a person who:

(a) was separated under honorable conditions from active federal military duty in the armed forces after having served more than 180 consecutive days, other than for training;

(b) as a member of a reserve component under an order of federal duty pursuant to 10 U.S.C. 12301(a), (d), or (g), 10 U.S.C. 12302, or 10 U.S.C. 12304 served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from duty under honorable conditions; or

(c) is or has been a member of the Montana army or air national guard and who has satisfactorily completed a minimum of 6 years of service in the armed forces, the last 3 years of which have been served in the Montana army or air national guard.

History: En. Sec. 1, Ch. 646, L. 1989; amd. Sec. 1, Ch. 78, L. 1993; amd. Sec. 27, Ch. 308, L. 1995; amd. Sec. 162, Ch. 42, L. 1997; amd. Sec. 11, Ch. 339, L. 1997; amd. Sec. 1, Ch. 24, L. 2003; amd. Sec. 10, Ch. 75, L. 2005.

39-29-102. Point preference or alternative preference in initial hiring for certain applicants — substantially equivalent selection procedure. (1) Subject to the restrictions in subsections (2) and (3), whenever a public employer uses a scored procedure, an applicant for an initial hiring, as defined in 39-30-103, must have added to the applicant’s score the following percentage points of the total possible points that may be granted in the scored procedure:

(a) 5 percentage points if the applicant is a veteran; and

(b) 10 percentage points if the applicant is a disabled veteran or an eligible relative.

(2) A veteran, disabled veteran, or eligible relative may not receive the percentage points provided for in subsection (1) unless the person:

(a) is a United States citizen; and

(b) meets the minimum qualifications required for the position. If no applicant meets the minimum qualifications and the public employer fills a training position, veterans’ preference must be applied.

(3) A disabled veteran who receives 10 percentage points under subsection (1)(b) may not receive an additional 5 percentage points under subsection (1)(a).

(4) Whenever a public employer uses a selection procedure other than a scored procedure, the public employer shall give preference to a disabled veteran, eligible relative, or veteran, in that order, over any nonpreferred applicant holding substantially equal qualifications, as defined in 39-30-103.

History: En. Sec. 2, Ch. 646, L. 1989; amd. Sec. 1, Ch. 168, L. 1999.

39-29-103. Notice and claim of preference. (1) A public employer shall, by posting or on the application form, give notice of the preference provided in 39-29-102.

(2) A job applicant who believes that the applicant is eligible to receive a preference shall claim the preference in writing before the time for filing applications for the position involved has passed. Failure to make a timely preference claim for a position is a complete defense to an action instituted by an applicant under 39-29-104 with regard to that position.

(3) If an applicant for a position makes a timely written preference claim, the public employer shall give written notice of its hiring decision to the applicant claiming preference.

History: En. Sec. 3, Ch. 646, L. 1989; amd. Sec. 2, Ch. 168, L. 1999.

39-29-104. Enforcement of preference. (1) An applicant who believes that the applicant is entitled to but has not been given the preference provided in 39-29-102 may, within 30 days of receipt of the notice of the hiring decision provided for in 39-29-103, submit to the public

employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(2) After following the procedure described in subsection (1), the applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which the application was received by the public employer. The petition must state facts that on their face entitle the applicant to a preference.

(3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 5 or more than 10 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer has the burden of proving by a preponderance of the evidence that the public employer applied the preference under 39-29-102 and made a reasonable hiring decision. The applicant has the burden of proving by a preponderance of the evidence that the applicant is a preference-eligible applicant.

(b) The time to appear provided in subsection (3)(a) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (3)(a), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(c) If the public employer does not carry its burden of proof under subsection (3)(a) and the court finds that the applicant is a preference-eligible applicant, the court shall order the public employer to comply with the provisions of 39-29-102. In addition, the court shall, upon proper proof, grant an award of backpay, reasonable attorney fees, and costs.

(4) Failure of an applicant to file a petition under subsection (2) within 90 days bars the filing of a petition. If a public employer fails to provide an explanation under subsection (1) within 15 days and a petition is filed under subsection (2), the court shall order the public employer to comply with the provisions of 39-29-102.

(5) The Montana Rules of Civil Procedure apply to a proceeding under this section to the extent that they do not conflict with this section.

History: En. Sec. 4, Ch. 646, L. 1989; amd. Sec. 3, Ch. 168, L. 1999.

39-29-105 through 39-29-110 reserved.

39-29-111. Retention during reduction in force. (1) Subject to the restrictions in subsections (2) and (3), during a reduction in force, a public employer shall retain in a position:

(a) a veteran, disabled veteran, or eligible relative whose performance has not been rated unacceptable under a performance appraisal system over other employees with similar job duties and qualifications and same length of service; and

(b) a disabled veteran with a service-connected disability of 30% or more whose performance has not been rated unacceptable under a performance appraisal system over other veterans, disabled veterans, and eligible relatives with similar job duties and qualifications and same length of service.

(2) An employee is not entitled to preference in retention under subsection (1) unless he is a United States citizen.

(3) The preference in retention under subsection (1) does not apply to a position covered by a collective bargaining agreement.

History: En. Sec. 5, Ch. 646, L. 1989.

39-29-112. Adoption of rules. The department of administration shall adopt rules implementing this chapter. The department's rules apply to all local and state public employers.

History: En. Sec. 6, Ch. 646, L. 1989.

CHAPTER 31 COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES

Part 1 General Provisions

39-31-101. Policy. In order to promote public business by removing certain recognized sources of strife and unrest, it is the policy of the state of Montana to encourage the practice and

procedure of collective bargaining to arrive at friendly adjustment of all disputes between public employers and their employees.

History: En. Sec. 1, Ch. 441, L. 1973; R.C.M. 1947, 59-1601.

39-31-102. Chapter not limit on legislative authority. This chapter does not limit the authority of the legislature, any political subdivision, or the governing body relative to appropriations for salary and wages, hours, fringe benefits, and other conditions of employment.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(5).

39-31-103. Definitions. When used in this chapter, the following definitions apply:

(1) "Appropriate unit" means a group of public employees banded together for collective bargaining purposes as designated by the board.

(2) "Board" means the board of personnel appeals provided for in 2-15-1705.

(3) "Confidential employee" means any person found by the board to be a confidential labor relations employee and any person employed in the personnel division, department of administration, who acts with discretionary authority in the creation or revision of state classification specifications.

(4) "Exclusive representative" means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer.

(5) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(6) "Labor organization" means any organization or association of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment.

(7) "Management official" means a representative of management having authority to act for the agency on any matters relating to the implementation of agency policy.

(8) "Person" includes one or more individuals, labor organizations, public employees, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(9) (a) "Public employee" means:

(i) except as provided in subsection (9)(b), a person employed by a public employer in any capacity; and

(ii) an individual whose work has ceased as a consequence of or in connection with any unfair labor practice or concerted employee action.

(b) Public employee does not mean:

(i) an elected official;

(ii) a person directly appointed by the governor;

(iii) a supervisory employee, as defined in subsection (11);

(iv) a management official, as defined in subsection (7);

(v) a confidential employee, as defined in subsection (3);

(vi) a member of any state board or commission who serves the state intermittently;

(vii) a school district clerk;

(viii) a school administrator;

(ix) a registered professional nurse performing service for a health care facility;

(x) a professional engineer; or

(xi) an engineer intern.

(10) "Public employer" means the state of Montana or any political subdivision thereof, including but not limited to any town, city, county, district, school board, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and any representative or agent designated by the public employer to act in its interest in dealing with public employees. Public employer also includes any local public agency designated as a head start agency as provided in 42 U.S.C. 9836.

(11) (a) “Supervisory employee” means an individual having the authority on a regular, recurring basis while acting in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or to effectively recommend the above actions if, in connection with the foregoing, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment.

(b) The authority described in subsection (11)(a) is the only criteria that may be used to determine if an employee is a supervisory employee. The use of any other criteria, including any secondary test developed or applied by the national labor relations board or the Montana board of personnel appeals, may not be used to determine if an employee is a supervisory employee under this section.

(12) “Unfair labor practice” means any unfair labor practice listed in 39-31-401 or 39-31-402.

History: En. Sec. 2, Ch. 441, L. 1973; amd. Sec. 1, Ch. 117, L. 1975; amd. Sec. 1, Ch. 384, L. 1975; R.C.M. 1947, 59-1602(part); amd. Sec. 1, Ch. 271, L. 1979; amd. Sec. 31, Ch. 397, L. 1979; amd. Sec. 1, Ch. 354, L. 1987; amd. Sec. 14, Ch. 108, L. 1995; amd. Sec. 1, Ch. 483, L. 2005.

39-31-104. Rules. The board shall adopt, amend, or rescind such rules it considers necessary and administratively feasible to carry out the provisions of this chapter.

History: En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(4).

39-31-105. Administrative procedure act applicable — conduct of hearing. All hearings and appeals must be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. Hearings and appeals may be conducted by telephone or by videoconference, with the consent of the necessary parties.

History: En. Sec. 17, Ch. 441, L. 1973; R.C.M. 1947, 59-1616; amd. Sec. 9, Ch. 90, L. 1995.

39-31-106. Board authorized to subpoena witnesses and administer oaths. (1) To accomplish the objectives and to carry out the duties prescribed by this chapter, the board may subpoena witnesses and may administer oaths and affirmations.

(2) In cases of neglect or refusal to obey a subpoena issued to any person, the district court of the county in which the investigations or the public hearings are taking place or the district court of the first judicial district of this state, upon application by the board, may issue an order requiring such person to appear before the board or agent to produce evidence or give testimony about the matter under investigation. Failure to obey such order may be punished by the court as contempt.

History: En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(1), (2).

39-31-107. Service of subpoenas, notices of hearing, and other process. Any subpoena, notice of hearing, or other process or notice of the board issued under the provisions of this chapter shall be served as provided by the rules of civil procedure.

History: En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(3).

39-31-108. Counsel for public parties to litigation. In any action brought under the provisions of this chapter in the courts of this state, the public employer shall be represented by the attorney general or attorney of subdivision and the board shall be represented by counsel hired to represent the board for purposes of that proceeding.

History: En. Sec. 11, Ch. 441, L. 1973; R.C.M. 1947, 59-1611.

39-31-109. Existing collective bargaining agreements not affected. Nothing in this chapter shall be construed to remove recognition of established collective bargaining agreements already recognized or in existence prior to July 1, 1973.

History: En. Sec. 16, Ch. 441, L. 1973; R.C.M. 1947, 59-1615.

Part 2 Public Employee Self-Organization and Certification of Bargaining Representative

39-31-201. Public employees protected in right of self-organization. Public employees shall have and shall be protected in the exercise of the right of self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours, fringe benefits, and other conditions of employment, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection free from interference, restraint, or coercion.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(1).

39-31-202. Board to determine appropriate bargaining unit — factors to be considered. (1) In order to ensure employees the fullest freedom in exercising the rights guaranteed by this chapter, the board or an agent of the board shall decide the unit appropriate for the purpose of collective bargaining and shall consider such factors as community of interest, wages, hours, fringe benefits, and other working conditions of the employees involved, the history of collective bargaining, common supervision, common personnel policies, extent of integration of work functions and interchange among employees affected, and the desires of the employees.

(2) If a state agency or facility of a state agency is reorganized to the extent that the reorganization results in substantial changes to the factors listed in subsection (1), the public employer representative, as provided in 39-31-301, may petition the board to make a new determination of the appropriate unit for the purpose of collective bargaining. In making this determination, the board shall take into account the consequences of the reorganization on each position in the affected agency or facility.

(3) Unless the board has received a petition, as provided in 39-31-207, to consider a collective bargaining unit that was not designated as an appropriate unit prior to the reorganization described in subsection (2), the board may not consider any labor organization that was not designated to represent employees of the affected agency or facility at the time that the reorganization became effective.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(2); amd. Sec. 1, Ch. 176, L. 1999.

39-31-203. Deduction of dues from employee's pay. Upon written authorization of any public employee within a bargaining unit, the public employer shall deduct from the pay of the public employee the monthly amount of dues as certified by the secretary of the exclusive representative and shall deliver the dues to the treasurer of the exclusive representative.

History: En. Sec. 12, Ch. 441, L. 1973; R.C.M. 1947, 59-1612.

39-31-204. Right of nonassociation with labor organization on religious grounds — requirements and procedure for assertion of right. (1) No public employee who is a member of a bona fide religious sect or division thereof, the established and traditional tenets or teachings of which oppose a requirement that a member of such sect or division join or financially support a particular or any labor organization, may be required to join or financially support that particular labor organization or any labor organization if the tenets or teachings oppose a requirement that any labor organization be joined or supported as a condition of employment if such public employee pays in lieu of periodic union dues, initiation fees, and assessments, at the same time or times such periodic union dues, initiation fees, and assessments would otherwise be payable, a sum of money equivalent to such periodic union dues, initiation fees, and assessments to a nonreligious, nonunion charity designated by the labor organization. Such public employee shall furnish to such labor organization written receipts evidencing such payments, and failure to make such payments or furnish such receipts shall subject the employee to the same sanctions as would nonpayment of dues, initiation fees, or assessments under the applicable collective bargaining agreement.

(2) A public employee desiring to avail himself or herself to the right of nonassociation with a labor organization as provided in this section shall make written application to the chairman of the board of personnel appeals. Within 10 days of the date of receipt of such application, the chairman shall appoint a committee of three, consisting of a clergyman not connected with the sect in question, a labor union official not directly connected with the labor organization in question, and a member of the public at large who shall be the chairman. The committee shall within 10 days of the date of its appointment meet at the locale of either the employee's residence or place of employment and, after receiving written or oral presentations from all interested parties, determine by a majority vote whether or not such public employee qualifies for the right of nonassociation with such labor organization. The committee's decision shall be made in writing within 3 days of the meeting date, and a copy thereof shall be forthwith mailed to such public employee, labor organization, and the chairman of the board of personnel appeals.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(5); amd. Sec. 1, Ch. 237, L. 1985.

39-31-205. Designated labor organizations to represent employees without discrimination. Labor organizations designated in accordance with the provisions of this chapter are responsible for representing the interest of all employees in the exclusive bargaining unit without discrimination for the purposes of collective bargaining with respect to rates of pay, hours, fringe benefits, and other conditions of employment.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(3).

39-31-206. Labor organization to guarantee certain rights and safeguards prior to certification or recognition. (1) Certification or recognition as an exclusive representative shall be extended or continued, as the case may be, only to a labor or employee organization the written bylaws of which provide for and guarantee the following rights and safeguards and whose practices conform to such rights and safeguards as:

- (a) provisions are made for democratic organization and procedures;
- (b) elections are conducted pursuant to adequate standards and safeguards;
- (c) controls are provided for the regulation of officers and agents having fiduciary responsibility to the organization; and
- (d) requirements exist for maintenance of sound accounting and fiscal controls, including annual audits.

(2) The board shall hear and decide all disputes arising under subsection (1).

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(4); amd. Sec. 1, Ch. 18, L. 1985.

39-31-207. Petition on representation question — investigation by board — hearing. (1) The board or an agent of the board shall investigate the petition and, if it has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice whenever, in accordance with such rules as may be prescribed by the board, a petition has been filed:

(a) by an employee or group of employees or any labor organization acting in their behalf alleging that 30% of the employees:

(i) wish to be represented for collective bargaining by a labor organization as exclusive representative; or

(ii) assert that the labor organization which has been certified or is currently being recognized by the public employer as bargaining representative is no longer the representative of the majority of employees in the unit; or

(b) by the public employer alleging that one or more labor organizations have presented to it a claim to be recognized as the exclusive representative in an appropriate unit.

(2) In this hearing, the board is not bound by common law and statutory rules of evidence.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

39-31-208. Representation election at direction of board. (1) If the board or an agent of the board, in the hearing provided for in 39-31-207, finds that there is a question of representation, it shall direct an election by secret ballot to determine whether and by which labor organization the employees desire to be represented or whether they desire to have no labor organization represent them and shall certify the results thereof.

(2) Only those labor organizations which have been designated by more than 10% of the employees in the unit found to be appropriate shall be placed on the ballot.

(3) The board or an agent of the board shall determine who is eligible to vote in the election and shall establish rules governing the election.

(4) Unless the majority vote is for no representation by a labor organization and in any election where none of the choices for a representative on the ballot receives a majority, a runoff election shall be conducted, the ballot providing for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election.

(5) A labor organization which receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part); amd. Sec. 32, Ch. 397, L. 1979.

39-31-209. Consent election. Nothing in 39-31-207 or 39-31-208 prohibits the waiving of hearings by stipulation for the purpose of a consent election in conformity with the rules of the board.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

39-31-210. Election in twelve-month period following valid election prohibited. An election shall not be directed in any bargaining unit or in any subdivision thereof within which in the preceding 12-month period a valid election has been held.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

39-31-211. Labor organizations representing employees of the board to be unaffiliated. A labor organization representing employees of the board may not affiliate or associate itself with a labor organization that represents any employees other than employees of the board. The board may not certify a labor organization as the exclusive representative of the employees of the board if, at the time of certification or thereafter, the labor organization is associated or affiliated with a labor organization that represents employees other than employees of the board.

History: En. Sec. 2, Ch. 271, L. 1979.

Part 3 Bargaining

39-31-301. Representative of public employer. The chief executive officer of the state, the governing body of a political subdivision, the commissioner of higher education, whether elected or appointed, or the designated authorized representative shall represent the public employer in collective bargaining with an exclusive representative.

History: En. Sec. 9, Ch. 441, L. 1973; amd. Sec. 3, Ch. 313, L. 1974; amd. Sec. 1, Ch. 35, L. 1975; R.C.M. 1947, 59-1609.

39-31-302. Participation by student representative when public employer is board of regents. When the board of regents is the public employer defined in 39-31-103, the student government at an institution of higher education may designate an agent or representative to meet and confer with the board of regents and the faculty bargaining agent prior to negotiations with the professional educational employees, to observe those negotiations and participate in caucuses as part of the public employer's bargaining team, and to meet and confer with the board of regents regarding the terms of agreement prior to the execution of a written contract between the regents and the professional educational employees. The student observer is obliged to maintain the confidentiality of these negotiations.

History: En. Sec. 2, Ch. 441, L. 1973; amd. Sec. 1, Ch. 117, L. 1975; amd. Sec. 1, Ch. 384, L. 1975; R.C.M. 1947, 59-1602(part).

39-31-303. Management rights of public employers. Public employees and their representatives shall recognize the prerogatives of public employers to operate and manage their affairs in such areas as, but not limited to:

- (1) direct employees;
- (2) hire, promote, transfer, assign, and retain employees;
- (3) relieve employees from duties because of lack of work or funds or under conditions where continuation of such work be inefficient and nonproductive;
- (4) maintain the efficiency of government operations;
- (5) determine the methods, means, job classifications, and personnel by which government operations are to be conducted;
- (6) take whatever actions may be necessary to carry out the missions of the agency in situations of emergency;
- (7) establish the methods and processes by which work is performed.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(2).

39-31-304. Negotiable items for school districts. Nothing in this chapter shall require or allow boards of trustees of school districts to bargain collectively upon any matter other than matters specified in 39-31-305(2).

History: En. Sec. 2, Ch. 117, L. 1975; R.C.M. 1947, 59-1617.

39-31-305. Duty to bargain collectively — good faith. (1) The public employer and the exclusive representative, through appropriate officials or their representatives, shall have the authority and the duty to bargain collectively. This duty extends to the obligation to bargain collectively in good faith as set forth in subsection (2) of this section.

(2) For the purpose of this chapter, to bargain collectively is the performance of the mutual obligation of the public employer or his designated representatives and the representatives of the exclusive representative to meet at reasonable times and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment or the negotiation of an agreement or any question arising thereunder and the execution of a written contract incorporating any agreement reached. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

(3) For purposes of state government only, the requirement of negotiating in good faith may be met by the submission of a negotiated settlement to the legislature in the executive budget or by bill or joint resolution. The failure to reach a negotiated settlement for submission is not, by itself, prima facie evidence of a failure to negotiate in good faith.

History: (1)En. Sec. 4, Ch. 441, L. 1973; Sec. 59-1604, R.C.M. 1947; (2), (3)En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; Sec. 59-1605, R.C.M. 1947; R.C.M. 1947, 59-1604, 59-1605(3), (4).

39-31-306. Collective bargaining agreements. (1) An agreement reached by the public employer and the exclusive representative must be reduced to writing and must be executed by both parties.

(2) Except as provided in subsection (5), an agreement may contain a grievance procedure culminating in final and binding arbitration of unresolved grievances and disputed interpretations of agreements.

(3) An agreement between the public employer and a labor organization must be valid and enforced under its terms when entered into in accordance with the provisions of this chapter and signed by the chief executive officer of the state or political subdivision or commissioner of higher education or by a representative. A publication of the agreement is not required to make it effective.

(4) The procedure for the making of an agreement between the state or political subdivision and a labor organization provided by this chapter is the exclusive method of making a valid agreement for public employees represented by a labor organization.

(5) An agreement to which a school is a party must contain a grievance procedure culminating in final and binding arbitration of unresolved and disputed interpretations of agreements. The aggrieved party may have the grievance or disputed interpretation of the agreement resolved either by final and binding arbitration or by any other available legal method and forum, but not by both. After a grievance has been submitted to arbitration, the grievant and the exclusive representative waive any right to pursue against the school an action or complaint that seeks the same remedy. If a grievant or the exclusive representative files a complaint or other action against the school, arbitration seeking the same remedy may not be filed or pursued under this section.

History: En. Sec. 10, Ch. 441, L. 1973; amd. Sec. 4, Ch. 313, L. 1974; R.C.M. 1947, 59-1610; amd. Sec. 1, Ch. 582, L. 1993.

39-31-307. Mediation of disputes. If, after a reasonable period of negotiation over the terms of an agreement or upon expiration of an existing collective bargaining agreement, a dispute concerning the collective bargaining agreement exists between the public employer and a labor organization, the parties shall request mediation.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(1).

39-31-308. Initiation of factfinding — designation of fact finder. (1) If, upon expiration of an existing collective bargaining agreement or 30 days following certification or recognition of an exclusive representative, a dispute concerning the collective bargaining agreement exists between the employer and the exclusive representative, either party may petition the board to initiate factfinding.

(2) Within 3 days of receipt of such petition, the board shall submit to the parties a list of five qualified, disinterested persons from which the parties shall alternate in striking two names.

The remaining person shall be designated fact finder. This process shall be completed within 5 days of receipt of the list. The parties shall notify the board of the designated fact finder.

(3) If no request for factfinding is made by either party before the expiration of the agreement or 30 days following certification or recognition of an exclusive representative, the board may initiate factfinding as provided for in subsection (2) above.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(2) thru (4).

39-31-309. Factfinding proceedings. (1) The fact finder shall immediately establish dates and place of hearings.

(2) The public employer and the exclusive representative are the only proper parties to factfinding proceedings.

(3) Upon request of either party or the fact finder, the board shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths.

(4) Upon completion of the hearings, but no later than 20 days from the date of appointment, the fact finder shall make written findings of facts and recommendations for resolution of the dispute and shall serve the findings on the public employer and the exclusive representative. The fact finder may make this report public 5 days after it is submitted to the parties. If the dispute is not resolved 15 days after the report is submitted to the parties, the report must be made public.

(5) When a party petitions the board to initiate factfinding, the cost of factfinding proceedings must be equally borne by the parties. When the board initiates factfinding, the cost of factfinding proceedings must be equally borne by the board and the parties.

(6) Nothing in 39-31-307 through 39-31-310 prohibits the fact finder from endeavoring to mediate the dispute in which the fact finder has been selected or appointed.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(5) thru (8); amd. Sec. 33, Ch. 397, L. 1979; amd. Sec. 10, Ch. 90, L. 1995.

39-31-310. Submission of issues to arbitration. Nothing in 39-31-307 through 39-31-310 prohibits the parties from voluntarily agreeing to submit any or all of the issues to final and binding arbitration, and if such agreement is reached, the arbitration shall supersede the factfinding procedures set forth in those sections. An agreement to arbitrate and the award issued in accordance with such agreement shall be enforceable in the same manner as is provided in this chapter for enforcement of collective bargaining agreements.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(9).

39-31-311. Training of fact finders and arbitrators. The board of personnel appeals shall establish a course of education for the training of fact finders and arbitrators. No person may serve as a fact finder or as an arbitrator under this chapter until he has successfully completed the course or equivalent education.

History: En. 59-1614.1 by Sec. 1, Ch. 57, L. 1977; R.C.M. 1947, 59-1614.1.

39-31-312. Nonnegotiable items for state prison. Collective bargaining agreements entered after July 14, 1982, may not contain provisions prohibiting or restricting the use of inmate labor as provided for in 53-30-151.

History: En. Sec. 3, Ch. 7, Sp. L. 1982.

Part 4 Unfair Labor Practices

39-31-401. Unfair labor practices of public employer. It is an unfair labor practice for a public employer to:

(1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in 39-31-201;

(2) dominate, interfere, or assist in the formation or administration of any labor organization; however, subject to rules adopted by the board under 39-31-104, an employer is not prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in any labor organization; however, nothing in this chapter or in any other statute of this state precludes a public employer

from making an agreement with an exclusive representative to require, as a condition of employment, that an employee who is not or does not become a union member, must have an amount equal to the union initiation fee and monthly dues deducted from his wages in the same manner as checkoff of union dues;

(4) discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter; or

(5) refuse to bargain collectively in good faith with an exclusive representative.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(1); amd. Sec. 34, Ch. 397, L. 1979.

39-31-402. Unfair labor practices of labor organization. It is an unfair labor practice for a labor organization or its agents to:

(1) restrain or coerce employees in the exercise of the right guaranteed in 39-31-201 or a public employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances;

(2) refuse to bargain collectively in good faith with a public employer if it has been designated as the exclusive representative of employees;

(3) use agency shop fees for contributions to political candidates or parties at state or local levels.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(2).

39-31-403. Remedies for unfair labor practices. Violations of the provisions of 39-31-401 or 39-31-402 are unfair labor practices remediable by the board pursuant to this part.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 35, Ch. 397, L. 1979.

39-31-404. Six-month limitation on unfair labor practice complaint — exception. No notice of hearing shall be issued based upon any unfair labor practice more than 6 months before the filing of the charge with the board unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the 6-month period shall be computed from the day of his discharge.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part).

39-31-405. Unfair labor practice complaint — investigation — notice of hearing — service — answer. (1) Whenever a complaint is filed alleging that any person has engaged in or is engaging in any such unfair labor practice, the board shall issue and cause to be served upon the person a copy of the complaint and provide the person with an opportunity to respond to all charges. After receipt of responses from the charged party, an agent designated by the board for such purposes shall investigate the alleged unfair labor practice.

(2) If, after the investigation, the agent designated by the board determines that the charge is without probable merit, the board shall issue and cause to be served upon the complaining party and the person being charged notice of its intention to dismiss the complaint. The dismissal becomes a final order of the board unless either party requests a review of the decision to dismiss the complaint. The request for a review must be made in writing within 10 days of receipt of the notice of intention to dismiss. If a review is requested, the board may uphold its decision to dismiss the complaint or, pursuant to subsection (3), schedule a hearing on the merits. If the board upholds its decision to dismiss the complaint, the dismissal becomes a final order of the board.

(3) If after the investigation or after the review provided for in subsection (2), the board determines that there is probable merit for the charge, the board shall issue and cause to be served upon the complaining party and the party charged a notice of hearing before the board, a member thereof, or before a designated agent at a time and place therein fixed, not less than 5 working days after the date of service.

(4) If a hearing is to be held, the person against whom the charge is filed shall file an answer to the complaint.

(5) Each party to an unfair labor practice proceeding has the right to disqualify, without cause, the hearing examiner designated by the board to hear the complaint. The right may be exercised only once by each party and must be exercised within 5 days from the time a party is

notified by the board of the hearing examiner designated to hear the matter. The exercise of this right is in addition to any rights a party has to disqualify a hearing examiner under 2-4-611.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 1, Ch. 95, L. 1983; (5)En. Sec. 1, Ch. 211, L. 1983.

39-31-406. Hearing on complaint — findings — order. (1) The complainant and the person charged shall be parties and shall appear in person or otherwise give testimony at the place and time fixed in the notice of hearing. In the discretion of the board or its agent conducting the hearing, any other person may be allowed to intervene in the proceeding and present testimony.

(2) In any hearing the board is not bound by the rules of evidence prevailing in the courts.

(3) The testimony taken by the board or its agent shall be reduced to writing and filed with the board. Thereafter, in its discretion the board upon notice may take further testimony or hear argument.

(4) If, upon the preponderance of the testimony taken, the board is of the opinion that any person named in the complaint has engaged in or is engaging in an unfair labor practice, it shall state its findings of fact and shall issue and cause to be served on the person an order requiring him to cease and desist from the unfair labor practice and to take such affirmative action, including reinstatement of employees with or without backpay, as will effectuate the policies of this chapter. The order may further require the person to make reports from time to time showing the extent to which he has complied with the order. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged or the payment to him of any backpay if it is found that the individual was suspended or discharged for cause.

(5) If, upon the preponderance of the testimony taken, the board is not of the opinion that the person named in the complaint has engaged in or is engaging in the unfair labor practice, then the board shall state its findings of fact and shall issue an order dismissing the complaint.

(6) If the evidence is presented before a member of the board or before an examiner, the member or the examiner, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed decision, together with a recommended order, which shall be filed with the board, and if no exceptions are filed within 20 days after service thereof upon the parties or within such further period as the board may authorize, the recommended order shall become the order of the board. The board shall issue a final order within 5 months after final briefs are submitted to the hearings officer. If briefs are to be submitted, but either or both of the parties fail to submit their brief on the date set by the hearing examiner at the close of the hearing on the matter, then the board shall issue a final order within 5 months after the date the last brief was ordered to be submitted. If no briefs are to be submitted, the board shall issue a final order within 5 months after the hearing.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 1, Ch. 369, L. 1979; amd. Sec. 1, Ch. 213, L. 1983.

39-31-407. Amendment of complaint. Any complaint may be amended by the complainant at any time prior to the issuance of an order based thereon, provided that the charged party is not unfairly prejudiced thereby.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part).

39-31-408. Modification by board of findings and order. Until the record in a proceeding has been filed in district court, the board at any time, upon reasonable notice and in such manner as it considers proper, may modify or set aside, in whole or in part, any finding or order made or issued by it.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(3).

39-31-409. Court enforcement and review of board order. (1) The board or the complaining party may petition for the enforcement of the order of the board and for appropriate temporary relief or a restraining order and shall file in the district court at its own expense the record in the proceedings.

(2) Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing and shall order the party charged to be served with notice of hearing at least 20 days before the date set for hearing.

(3) No objection that has not been raised before the board shall be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances.

(4) The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(5) If either party applies to the court for leave to present additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to present it in the hearing before the board, the court may order the additional evidence to be taken before the board and to be made part of the record. The board may modify its findings as to the facts or make new findings by reason of additional evidence so taken and filed, and it shall file the modifying or new findings with the district court.

(6) After the hearing, the district court shall issue its order granting such temporary or permanent relief or restraining order as it considers just and proper, enforcing as so modified or setting aside, in whole or in part, the order of the board. Any order of the district court shall be subject to review by the supreme court in accordance with rules of civil procedure.

(7) The commencement of proceedings under subsections (1) through (6) of this section shall not, unless specifically ordered by the court, operate as a stay of the board's order.

History: En. Sec. 8, Ch. 441, L. 1973; R.C.M. 1947, 59-1608.

TITLE 40

FAMILY LAW

CHAPTER 4

TERMINATION OF MARRIAGE, CHILD CUSTODY, SUPPORT

Part 2

Support, Custody, Visitation, and Related Provisions

40-4-225. Access to records by parent. Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including but not limited to medical, dental, law enforcement, and school records, may not be denied to a parent who is a party to a parenting plan.

History: En. Sec. 4, Ch. 416, L. 1981; amd. Sec. 26, Ch. 343, L. 1997.

CHAPTER 6

PARENT AND CHILD

Part 2

Obligations of Parents

40-6-234. When parental authority ceases. The authority of the parent ceases:

- (1) upon the appointment, by a court, of a guardian of the person of a child;
- (2) upon the marriage of a child; or
- (3) upon its attaining majority.

History: En. Sec. 291, Civ. C. 1895; re-en. Sec. 3749, Rev. C. 1907; re-en. Sec. 5841, R.C.M. 1921; Cal. Civ. C. Sec. 204; Field Civ. C. Sec. 95; re-en. Sec. 5841, R.C.M. 1935; R.C.M. 1947, 61-112.

40-6-237. Destruction of property by minor — liability of parents. Any municipal corporation, county, city, town, school district, or department of the state of Montana, any person, or any religious organization whether incorporated or unincorporated is entitled to recover damages in a civil action in an amount not to exceed \$2,500 in a court of competent jurisdiction from the parents of any person under the age of 18 years, living with the parents,

who shall maliciously or willfully destroy property, real, personal, or mixed, belonging to such municipal corporation, county, city, town, school district, department of the state of Montana, person, or religious organization.

History: En. Sec. 1, Ch. 195, L. 1957; amd. Sec. 1, Ch. 227, L. 1977; R.C.M. 1947, 61-112.1; amd. Sec. 1, Ch. 560, L. 1981.

Part 5 Caretaker Relative — Authorization for Medical Care

40-6-501. Purpose — legislative intent — parental rights — definitions. (1) The legislature recognizes that the rights of parents to the custody and control of a child are based upon liberties secured by the United States and Montana constitutions and that a parent's rights to that custody and control of a child are therefore normally supreme to the interests of other persons. The legislature also recognizes a growing phenomenon in which absent or otherwise unavailable parents have temporarily surrendered the custody and care of their children to a grandparent or other relative for lengthy periods of time. Regardless of the purpose of the absence, a child willfully surrendered to a relative for an extended time period still has the same needs as a child in the care of its parents. In this situation, a caretaker relative assumes responsibilities for the child but has no legal right of control over the child, a situation that interferes in the caretaker relative's ability to perform routine functions of child rearing, including tending to the medical needs of the child. It is therefore the purpose of the legislature in these instances to protect the rights of a child granted by Article II, section 15, of the Montana constitution by granting a caretaker relative limited authority for a child left in the relative's care.

(2) It is the intent of the legislature that a caretaker relative given the responsibility of caring for a child with little or no warning and without any other provision having been made for the child's care, such as the appointment of a guardian or the provision of a power of attorney, be granted authority to consent to medical care for the child without superseding any parental rights regarding the child.

(3) Section 40-6-502 and this section are not intended to affect the rights and responsibilities of a parent, legal guardian, or other custodian regarding the child, do not grant legal custody of the child to the caretaker relative, and do not grant authority to the caretaker relative to consent to the marriage or adoption of the child or to receive notice of a medical procedure, including abortion, not consented to by the relative, if notice is required by law, for the child except as expressly provided in this section.

(4) For the purposes of 40-6-502 and this section, the following definitions apply:

(a) "Caretaker relative" or "relative" means an individual related by blood, marriage, or adoption by another individual to the child whose care is undertaken by the relative, but who is not a parent, foster parent, stepparent, or legal guardian of the child.

(b) "Caretaker relative medical authorization affidavit" or "affidavit" means an affidavit completed in compliance with 40-6-502.

(c) "Health care provider" means a person who provides medical care.

(d) "Medical care" means care by a health care provider, for which parental consent is normally required, for the prevention, diagnosis, or treatment of a mental, physical, or dental injury or disease.

(e) "Parent" means a biological or adoptive parent or other legal guardian of a child.

History: En. Sec. 1, Ch. 393, L. 2007.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

Applicability: Section 7, Ch. 393, L. 2007, provided: "[This act] applies to a caretaker relative, as defined in [section 1] [40-6-501], to whom a child is given by a parent after October 1, 2007, for care by the relative."

40-6-502. Caretaker relative medical authorization affidavit — use — immunity — format. (1) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child has the same authority as a custodial parent of the child to consent to medical care for the child for which parental consent is usually required if:

(a) in leaving the child with the caretaker relative, the parent expressed no definite time period in which the parent would return for the child;

- (b) the child is residing with the caretaker relative on a full-time basis;
- (c) the caretaker relative is unable to contact the parent following the voluntary leaving of the child with the relative or the parent refuses to regain custody of the child after a written request by the relative to do so;
- (d) no adequate provision, such as the appointment of a guardian ad litem or execution of a power of attorney, has otherwise been made for the medical care of the child; and
- (e) a caretaker relative medical authorization affidavit is completed in compliance with this section.

(2) An affidavit is effective only if it is signed by the caretaker relative, under oath, before a notary public. A clear photographic copy of an affidavit completed in compliance with this section is sufficient in any instance in which an original is required by a health care provider.

(3) Unless the rights of a parent have been judicially terminated or unless the ability to give legal consent for the child to receive medical care for which parental consent is usually required has been granted to the caretaker relative pursuant to 40-4-211 and 40-4-228, a decision by a parent of the child communicated to the health care provider regarding the health care of the child supersedes a conflicting decision by a caretaker relative made pursuant to an affidavit completed in compliance with this section. However, a decision by a parent does not supersede a decision by a caretaker relative made pursuant to an affidavit completed in compliance with this section if the decision by the parent endangers the life of the child. A health care provider may require reasonable proof of authenticity of a decision by a parent intended to supersede a decision by a caretaker relative.

(4) (a) A public or private health care provider or a public or private school official who acts in good faith reliance on a caretaker relative medical authorization affidavit completed in compliance with this section and who has no actual knowledge of facts contrary to those indicated in the affidavit is not subject to civil liability or criminal prosecution or to a professional disciplinary procedure for an action that would have been proper if the facts had been as the health care provider believed them to be.

(b) This subsection (4) applies even if medical care is provided to a child against the wishes of a parent of that child if the health care provider rendering the service does not have actual knowledge of the parent's wishes.

(5) A health care provider who relies on an affidavit completed in compliance with this section has no obligation to make further inquiry or investigation.

(6) An affidavit completed in compliance with this section is effective for the earlier of:

- (a) 6 months;
- (b) until it has been revoked by the caretaker relative; or
- (c) until the child no longer resides with the caretaker relative.

(7) If the child ceases to live with the caretaker relative or the caretaker relative revokes the affidavit, the caretaker relative shall provide written notice of that fact to all health care providers to whom the caretaker relative has given the affidavit or to whom the caretaker relative has caused the affidavit to be given.

(8) This section does not relieve a person from a violation of other law, and this section does not affect the rights of a child's parent except as provided in this section.

(9) A caretaker relative medical authorization affidavit is invalid unless it is written in substantially the following form and contains the warning provided for in paragraph 5 of the format below:

CARETAKER RELATIVE'S MEDICAL AUTHORIZATION AFFIDAVIT

Use of this affidavit is authorized by 40-6-502, MCA.

1. INSTRUCTIONS: The completion and signing of the affidavit before a notary public are sufficient to authorize medical care for the named child. Please print clearly.

The child named below lives in my home, and I am 18 years of age or older.

- a. Name of child:
- b. Child's date of birth:
- c. My name (caretaker relative):
- d. My home address:

e. My relationship to the child (the caretaker relative must be an individual related by blood, marriage, or adoption by another individual to the child whose care is undertaken by the caretaker relative, but who is not a parent, foster parent, stepparent, or legal guardian of the child):

2. I hereby certify that this affidavit is not being used for an unlawful purpose.

3. My date and year of birth:

4. Check the following if true (all must be checked for this affidavit to apply):

☐ A parent of the child identified in paragraph 1a of this affidavit has left the child with me and has expressed no definite time period when the parent will return for the child.

☐ The child is now residing with me on a full-time basis.

☐ I am unable to locate or contact the parent of the child at this time to notify that parent of my intended authorization, or the parent refuses to regain custody of the child even though I have asked in writing that the parent do so.

☐ No adequate provision, such as appointment of a guardian ad litem or execution of a power of attorney, has been made for medical care for the child.

5. **WARNING: DO NOT SIGN THIS FORM IF ANY OF THE STATEMENTS ABOVE ARE INCORRECT OR YOU WILL BE COMMITTING A CRIME PUNISHABLE BY A FINE, IMPRISONMENT, OR BOTH.**

6. I declare under penalty of false swearing under the laws of Montana that the foregoing is true and correct.

Signed this ___ day of _____, 20__.

(Signature of caretaker relative)

(Signature, county, state, and seal of notary public)

7. **NOTICES:**

a. Completion of this affidavit does not affect the rights of the child's parent or legal guardian regarding the care, custody, and control of the child and does not mean that the caretaker relative has legal custody of the child.

b. A health care provider who relies on this affidavit has no obligation to make any further inquiry or investigation.

c. This affidavit is not valid for more than 6 months after the date on which it is signed by the caretaker relative.

8. **ADDITIONAL INFORMATION:**

a. **TO CARETAKER RELATIVES:** If the child stops living with you, you shall notify anyone to whom you have given this affidavit, as well as anyone who has received the affidavit from someone else.

b. **TO PUBLIC AND PRIVATE HEALTH CARE PROVIDERS AND PUBLIC AND PRIVATE SCHOOL OFFICIALS:** A public or private health care provider or a public or private school official who acts in good faith reliance upon a caretaker relative medical authorization affidavit to provide medical care, without actual knowledge of facts contrary to those indicated in the affidavit, is not subject to criminal prosecution or civil liability to any person, or subject to any professional disciplinary action, for reliance on the affidavit if the form is completed in compliance with 40-6-502, MCA.

History: En. Sec. 2, Ch. 393, L. 2007.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

Applicability: Section 7, Ch. 393, L. 2007, provided: "[This act] applies to a caretaker relative, as defined in [section 1] [40-6-501], to whom a child is given by a parent after October 1, 2007, for care by the relative."

Part 6

Caretaker Relative — Child Custody Rights

40-6-601. Legislative finding and purpose — definitions. (1) The legislature recognizes that the right of parents to the custody and control of their children is based upon the liberties secured by the United States and Montana constitutions and that a parent's right to that custody and control is therefore normally supreme to the interests of other persons. The

legislature also recognizes a growing phenomenon in which absent or otherwise unavailable parents have temporarily surrendered the custody and care of a child to a grandparent or other caretaker relative for a lengthy period of time. The legislature finds that a caretaker relative frequently offers a child a loving, stable, and secure environment in which to live, make friends, and attend school, which is an environment not provided by a parent who temporarily abandons a child. However, a child is deprived of that caring and safe environment when a parent returns to claim the child with little or no notice to the caretaker relative. This situation, which in some instances has occurred multiple times with the same child, is disruptive to the more stable life offered by the caretaker relative and may violate the child's rights ensured by Article II, section 15, of the Montana constitution, such as the right under Article II, section 3, of the Montana constitution of seeking safety, health, and happiness. For these reasons, it is the purpose of the legislature in enacting 40-6-602 and this section to exercise its police powers for the health and welfare of children who have been abandoned by their parents to the care of relatives and to create a procedure, applicable in limited situations caused by the voluntary surrender of a child by a parent, under circumstances indicating abandonment, whereby a child in the care of a relative may remain with that relative while the issue of abandonment by the parent is reviewed and determined by a court of law. The legislature believes that this temporary infringement on the right of a parent to the custody and control of a minor child is justified by the possibility of abandonment by the parent, because the welfare of the child is at stake, and because of the likely violation of the child's rights ensured by Article II, section 15, of the Montana constitution.

(2) As used in 40-6-602 and this section, the following definitions apply:

(a) "Caretaker relative" or "relative" means an individual related to a child by blood, marriage, or adoption by another individual, who has care and custody of a child but who is not a parent, foster parent, stepparent, or legal guardian of the child.

(b) "Parent" means a biological or adoptive parent or other legal guardian of a child.

History: En. Sec. 1, Ch. 496, L. 2007.

40-6-602. Caretaker relative rights upon return of parent — continuing custody affidavit — review, finding, and order by district court — limited reconsideration — immunity. (1) If custody of a child has been voluntarily given to a relative of the child by a parent of the child and the child has remained with that relative for at least 6 months under circumstances in which it is unclear whether or when the parent will return and retake custody of the child, the provisions of this section apply unless, during that 6-month period, the parent expresses to the relative a firm intention and a date on which the parent will return and resume custody of the child and subsequently adheres to that schedule.

(2) Upon a return of the parent and an expression by the parent of an intent by that parent to reassert the parent's right of custody and control over the child, the caretaker relative may file, without payment of a filing fee, with the district court in the county of the relative's residence a detailed affidavit as provided in this section. The affidavit must contain the following matters, the exclusion of any of which makes the affidavit void:

(a) the identification of:

(i) the caretaker relative, including the relative's address;

(ii) the child in the custody of the relative; and

(iii) the parent demanding custody of the child, including the parent's address, if known;

(b) a statement of the facts, as nearly as can be determined, of:

(i) the date, time, and circumstances surrounding the voluntary surrender of the custody of the child to the caretaker relative, including any conversation between the relative and the parent concerning the purpose of the parent's absence and when the parent would return and resume custody of the child;

(ii) the reason for the surrender of the child to the relative, as far as is known by the relative;

(iii) the efforts made by the relative to care for the child, including:

(A) facts explaining the nature of the home provided by the relative for the child;

(B) the schooling of the child while in the relative's custody; and

(C) the socialization of the child with other children and adults, both inside and outside the family of the caretaker relative; and

(iv) whether any contact was made by the child's parent with the relative, the child, or both, during the absence of the parent and if so, the date, time, and circumstances of that contact, including any conversation between the relative and the parent concerning when the parent would return and resume custody of the child;

(c) a statement by the caretaker relative as to why the relative wishes to maintain custody of the child;

(d) a warning, in at least 14-point type, to the caretaker relative in the following language: "WARNING: DO NOT SIGN THE FOREGOING AFFIDAVIT IF ANY OF THE ABOVE STATEMENTS ARE INCORRECT OR YOU WILL BE COMMITTING AN OFFENSE PUNISHABLE BY FINE, IMPRISONMENT, OR BOTH"; and

(e) a notarized signature of the caretaker relative following a written declaration that the affidavit is made under oath and under penalty of the laws of Montana governing the giving of false sworn testimony and that the information stated by the caretaker relative in the affidavit is true and correct.

(3) A copy of the affidavit filed with the district court must be provided by the caretaker relative to the child's parent, if the address or location of the parent is known to the relative, and may be provided to the department of public health and human services. A caretaker relative may maintain temporary custody of the child for 5 days following the return of the parent and the demand by the parent for custody of the child pending completion of the affidavit and the order of the district court. During that 5-day period, the caretaker relative may not be deprived of the custody of the child by a peace officer or by the order of a court unless a court finds, upon petition by the child's parent and after a hearing and upon notice to the caretaker relative as the court shall require, that:

(a) the child has not been in the custody of the caretaker relative for at least 6 months;

(b) the caretaker relative has committed child abuse or neglect with regard to the child in the custody of the relative; or

(c) the action by the caretaker relative to make and file the affidavit with the district court in accordance with this section was not made in good faith.

(4) Upon receipt of the caretaker relative's affidavit pursuant to subsection (3), the department may proceed pursuant to 41-3-202 as if a report of abandonment of the child had been received.

(5) (a) Within 48 hours of the filing of the affidavit, the district court shall review the affidavit and determine ex parte whether the affidavit contains prima facie evidence that the child was abandoned by the child's parent. If the court determines that there is prima facie evidence that the child was abandoned by the child's parent, the court shall within 3 business days of its determination of prima facie evidence enter appropriate findings of fact concerning the abandonment and enter an ex parte order approving and ordering continued custody and control of the child by the caretaker relative. An order of the district court pursuant to this subsection approving and ordering continued custody by the caretaker relative is effective for 14 days following entry of the order.

(b) If the court determines that the affidavit does not provide prima facie evidence of abandonment by the parent, the court shall within 3 business days of its determination make appropriate findings of fact and order the child returned to the parent. Upon receipt of the written findings and order of the court, the caretaker relative shall surrender the custody and control of the child to the child's parent.

(c) During or after the 14-day period established under subsection (5)(a), the caretaker relative may commence a parenting plan proceeding under 40-4-211 or petition the court to be appointed the guardian of the minor under 72-5-225.

(6) Upon entry of an order by the district court pursuant to subsection (5)(a), a copy of the order must be sent to the child's parent, if the address of the parent is known.

(7) The child's parent may, after receipt of the court's findings and order ordering continued custody of a child by a caretaker relative, apply to the court, upon notice to the caretaker relative as the court shall provide, for a reconsideration of the court's order approving continued custody of the child by the relative. The court shall reconsider its order and may reverse its order based upon presentation of evidence of nonabandonment. Pending a reconsideration pursuant to this

subsection, custody of the child must remain with the relative unless the order of the district court approving that custody expires or a court has ordered a change of custody pursuant to subsection (3).

(8) (a) A caretaker relative refusing to surrender custody of a child while acting in good faith and in accordance with this section is immune from civil or criminal action brought because of that refusal.

(b) A peace officer acting in good faith and taking or refusing to take custody of a child from a relative in accordance with this section and the entity employing the officer is immune from civil or criminal action or professional discipline brought because of the taking of or refusal to take custody of the child.

(9) Subject to availability of appropriations, the attorney general shall prepare a form for the affidavit provided for in this section and shall distribute the form as the attorney general determines appropriate.

History: En. Sec. 2, Ch. 496, L. 2007.

TITLE 41

MINORS

CHAPTER 1

RIGHTS AND OBLIGATIONS OF MINORS

Part 1

Minority

41-1-101. Minors and adults defined. (1) Minors are:

- (a) males under 18 years of age;
- (b) females under 18 years of age.
- (2) All other persons are adults.

History: En. Secs. 10, 12, Civ. C. 1895; re-en. Secs. 3584, 3586, Rev. C. 1907; re-en. Sec. 5673, R.C.M. 1921; Cal. Civ. C. Sec. 25; Field Civ. C. Sec. 11; re-en. Sec. 5673, R.C.M. 1935; amd. Sec. 16, Ch. 240, L. 1971; amd. Sec. 23, Ch. 94, L. 1973; R.C.M. 1947, 64-101.

CHAPTER 2

CHILD LABOR

Part 1

Child Labor Standards Act

41-2-102. Short title. This part may be cited as the “Child Labor Standards Act”.

History: En. Sec. 1, Ch. 391, L. 1993.

41-2-103. Definitions. As used in this part, the following definitions apply:

- (1) “Agriculture” means:
 - (a) all aspects of farming, including the cultivation and tillage of the soil;
 - (b) (i) dairying; and
 - (ii) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, including commodities defined as agricultural commodities in the federal Agricultural Marketing Act (12 U.S.C. 1141j(g));
 - (c) the raising of livestock, bees, fur-bearing animals, or poultry; and
 - (d) any practices, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.
- (2) “Department” means the department of labor and industry provided for in 2-15-1701.

(3) "Domestic service" means an occasional, irregular, or incidental nonhazardous occupational activity related to and conducted in or around a private residence, including but not limited to babysitting, pet sitting or similar household chore, and manual yard work. Domestic service specifically excludes industrial homework.

(4) (a) "Employed" or "employment" means an occupation engaged in, permitted, or suffered, with or without compensation in money or other valuable consideration, whether paid to the minor or to some other person, including but not limited to occupations as servant, agent, subagent, or independent contractor.

(b) The term does not include casual, community service, nonrevenue raising, uncompensated activities.

(5) "Employer" includes an individual, partnership, association, corporation, business trust, person, or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.

(6) "Minor" means an individual under 18 years of age, except for an individual who:

(a) has received a high school diploma or has received a passing score on the general education development examination; or

(b) is 16 years of age or older and is enrolled in a registered state or federal apprenticeship program.

(7) "Occupation" means:

(a) an occupation, service, trade, business, or industry in which employees are employed;

(b) any branch or group of industries in which employees are employed; or

(c) any employment or class of employment in which employees are employed.

History: En. Sec. 2, Ch. 391, L. 1993.

41-2-104. Exemptions. The provisions of this part do not apply to a minor who is employed:

(1) in an agricultural occupation not otherwise prohibited by this part and who has received written consent from the minor's parents or a person standing in place of the parent who works on a farm or ranch where the parent or person is also employed;

(2) in domestic service or an agricultural pursuit performed outside school hours in connection with a home or a farm owned or operated by the minor's parent or by a person standing in place of the parent;

(3) by the parent or a person standing in place of the parent;

(4) during periods of school vacations on a campsite of a nonprofit corporation engaged in citizenship training and character building;

(5) as an actor, model, or performer;

(6) outside school hours by a home owner in casual work usual to the home of the home owner and not in connection with the home owner's business, trade, or profession;

(7) by the legislature as a legislative aide or page;

(8) in the distribution or sale of or in the collection for newspapers, periodicals, or circulars; or

(9) as an official or referee for a nonprofit athletic organization. A minor who is under the age of 14 may not officiate at adult events or activities.

History: En. Sec. 3, Ch. 391, L. 1993; amd. Sec. 1, Ch. 89, L. 1995.

41-2-105. Prohibited employment of minors under fourteen years of age. Except as provided in 41-2-104, a minor who is under 14 years of age may not be employed in or in connection with an occupation.

History: En. Sec. 4, Ch. 391, L. 1993.

41-2-106. Prohibited employment of minors who are fourteen and fifteen years old. Unless otherwise exempted, a minor 14 or 15 years of age may not be employed in the prohibited occupations in 41-2-107 or in:

(1) a manufacturing occupation;

(2) a processing occupation, including but not limited to filleting fish, dressing poultry, cracking nuts, or laundering and drycleaning;

(3) an occupation that requires the performance of duties in a workroom or workplace where goods are manufactured, mined, or processed;

- (4) the operation or tending of a hoisting apparatus or of power-driven machinery;
- (5) an occupation in connection with:
 - (a) transporting persons or property by rail, highway, air, water, pipeline, or other means;
 - (b) warehousing and storage;
 - (c) communication and public utilities; or
 - (d) construction or repair;
- (6) an occupation in a retail, food service, or gasoline establishment, including:
 - (a) work performed in or around a boiler or an engine room;
 - (b) work in connection with the maintenance or the repair of an establishment, machine, or equipment;
 - (c) outside window washing that involves working from windowsills and all work requiring the use of ladders, scaffolds, or their substitutes at a height of more than 20 feet;
 - (d) an occupation that involves operating, assembling, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, food choppers and cutters, or bakery-type mixers;
 - (e) work in freezers and meat coolers and all work preparing meat for sale, except wrapping, scaling, labeling, weighing, pricing, and stacking when performed in other areas;
 - (f) loading or unloading goods to and from a truck, railroad car, or conveyor; or
 - (g) an occupation in a warehouse, except for office or clerical work;
- (7) the following agricultural occupations, unless otherwise exempt or working as a student-learner pursuant to 41-2-109:
 - (a) felling, bucking, skidding, loading, or unloading timber with a butt diameter of more than 9 inches;
 - (b) repairing a building from a ladder or scaffold at a height of more than 20 feet;
 - (c) working inside:
 - (i) a fruit, forage, or grain storage structure designed to retain an oxygen-deficient or toxic atmosphere; or
 - (ii) an upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position;
 - (d) handling or using agricultural chemicals classified as poisonous;
 - (e) handling or using a blasting agent, including but not limited to dynamite, black powder, sensitized ammonium nitrate, blasting caps, or primer cord; or
 - (f) transporting, transferring, or applying anhydrous ammonia.

History: En. Sec. 5, Ch. 391, L. 1993.

41-2-107. Prohibited employment of minors who are sixteen and seventeen years old. Unless working as an apprentice or student-learner under the provisions of 41-2-110, a minor 16 or 17 years of age may not be employed in or in connection with any of the following occupations:

- (1) manufacturing or storing explosives or articles containing explosive components;
- (2) logging and the operation of a sawmill, lath mill, or shingle mill;
- (3) the operation of power-driven woodworking machines;
- (4) an occupation involving exposure to a radioactive substance or ionizing radiation;
- (5) the operation of a freight elevator, except for a freight elevator permitted for use under the child labor provisions of the federal Fair Labor Standards Act of 1938, or other power-driven hoisting apparatus;
- (6) the operation of a power-driven metal forming, punching, and shearing machine;
- (7) a mining occupation;
- (8) slaughtering, meatpacking, meat processing, or rendering;
- (9) the operation of a power-driven bakery machine;
- (10) the operation of a power-driven paper products machine;
- (11) the manufacture of brick, tile, or similar products;
- (12) the operation of a circular saw, bandsaw, or guillotine shears;
- (13) a wrecking or demolition operation;
- (14) an excavation operation;
- (15) a roofing operation;

- (16) riding outside a motor vehicle to assist in transporting or delivering goods; and
- (17) a coal mining operation.

History: En. Sec. 6, Ch. 391, L. 1993.

41-2-108. Employment of minors who are fourteen and fifteen years old. (1) Unless enrolled in and employed pursuant to a school-supervised and school-administered work experience or career exploration program pursuant to 41-2-115(2), a minor 14 or 15 years of age may not be employed in any occupation during school hours.

(2) A minor 14 or 15 years of age may be employed outside school hours in:

- (a) the distribution or sale of or in the collection for newspapers, magazines, periodicals, or circulars; and
- (b) the following occupations in retail, food service, and gasoline service establishments:
 - (i) office and clerical work, including the operation of an office machine;
 - (ii) cashiering, selling, modeling, art work, work in an advertising department, window trimming, and comparative shopping;
 - (iii) price marking and tagging by hand or by machine, assembling orders, packing, and shelving;
 - (iv) bagging and carrying out a customer's order;
 - (v) errand and delivery work by foot, bicycle, or public transportation;
 - (vi) cleanup work, including the use of a vacuum cleaner and a floor waxer, and maintenance of grounds, but not including the use of a power-driven mower or cutter;
 - (vii) kitchen work and other work involved in preparing and serving food and beverages, including the operation of machines and devices used in the performance of the work, which may include but are not limited to a dishwasher, toaster, dumbwaiter, popcorn popper, milkshake blender, and coffee grinder; or
 - (viii) work in connection with cars and trucks if confined to dispensing gasoline and oil; courtesy service; car cleaning, washing, and polishing; but not including work involving the use of a pit, a rack, or a lifting apparatus or involving the inflation of a tire mounted on a rim equipped with a removable ring.

History: En. Sec. 7, Ch. 391, L. 1993.

41-2-109. Exemptions from prohibited occupations in agriculture. (1) The prohibitions from employment in agricultural operations provided for in 41-2-106(7) do not apply to the employment of a student-learner who is 14 or 15 years of age if all of the following requirements are met:

- (a) The student-learner is enrolled in a K-12 career and vocational/technical education training program in agriculture under a recognized state or local educational authority or in a substantially similar program conducted by a private school.
- (b) The student-learner is employed under a written agreement, providing that:
 - (i) the work is incidental to training;
 - (ii) the work is intermittent, for short periods of time, and under the direct and close supervision of a qualified and experienced person;
 - (iii) safety instruction is given by the school and correlated by the employer with on-the-job training; and
 - (iv) a schedule of organized and progressive work processes to be performed on the job has been prepared.
- (c) The written agreement contains the name of the student-learner and is signed by the employer and by a person authorized to represent the educational authority or school.
- (d) Copies of each agreement are kept on file both by the educational authority or school and by the employer.

(2) The prohibitions in 41-2-106(7) do not apply to the employment of a minor who is 14 or 15 years of age in those occupations in which the minor has successfully completed a work training program, including safety instruction and training in the use of machinery, under the 4-H program of the federal extension service, a program of the United States department of education, or a similar program if the safety program has been approved by the department and if the minor is employed outside school hours on the equipment for which the minor has been trained.

History: En. Sec. 8, Ch. 391, L. 1993; amd. Sec. 13, Ch. 133, L. 2001.

41-2-110. Exemptions from prohibited employment of minors who are sixteen or seventeen years old. (1) The prohibitions in 41-2-107 do not apply to the employment of an apprentice or student-learner who is 16 or 17 years of age if the minor is employed under the following conditions:

- (a) for an apprentice, if:
 - (i) the minor is employed in a craft recognized as an apprenticeable trade;
 - (ii) the work is incidental to the minor's training;
 - (iii) the work is intermittent, for short periods of time, and under the direct and close supervision of a journeyman as a necessary part of the apprentice training; and
 - (iv) the minor is registered by the bureau of apprenticeship and training of the United States department of labor as employed in accordance with the standards established by that bureau or is registered by the department as employed in accordance with the standards of the department;
- (b) for a student-learner, if:
 - (i) the student-learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a course of study in a substantially similar program conducted by a private school;
 - (ii) the student-learner is employed under a written agreement, providing that:
 - (A) the work of the student-learner is incidental to the student-learner's training;
 - (B) the work is intermittent, for short periods of time, and under the direct and close supervision of a qualified and experienced person;
 - (C) safety instruction is given by the school and correlated by the employer with on-the-job training; and
 - (D) a schedule of organized and progressive work processes to be performed on the job has been prepared;
 - (iii) the written agreement contains the name of the student-learner and is signed by the employer and the school coordinator or principal; and
 - (iv) copies of each agreement are kept on file both by the educational authority or school and by the employer.

(2) This exemption for the employment of student-learners may be revoked by the department in any situation if the department finds that reasonable precautions have not been observed for the safety of minors employed under the exemption.

(3) A high school graduate who is 16 or 17 years of age may be employed in an occupation in which the graduate has completed training as a student-learner as provided in this section.

History: En. Sec. 9, Ch. 391, L. 1993.

41-2-115. Working hours. (1) Unless otherwise exempt or as provided in subsection (2), a minor who is 14 or 15 years of age:

- (a) may not be employed before 7 a.m. or after 7 p.m., except that the minor may be employed until 9 p.m. during periods outside the school year (June 1 through Labor Day, depending on local standards); or
- (b) may not be employed more than:
 - (i) 3 hours on a school day;
 - (ii) 18 hours in a school week;
 - (iii) 8 hours on a nonschool day; or
 - (iv) 40 hours in a week in a nonschool week.

(2) A minor who is 14 or 15 years of age and who is enrolled in and employed pursuant to a school-supervised and school-administered work experience or career exploration program approved by the department or the office of public instruction may be employed up to 23 hours in 1 week when the program is in session, any portion of which may be during school hours.

History: En. Sec. 10, Ch. 391, L. 1993.

41-2-116. Enforcement — right to enter and inspect premises and records — subpoena power. The department shall enforce the provisions of this part and file a complaint against a person who violates the provisions of this part. The department may at any time enter and inspect any place or establishment governed by the provisions of this part and have access to

employment records kept on file by the employer that may aid in the enforcement of this part. The department may subpoena documentary evidence relating to an investigation under this part.

History: En. Sec. 11, Ch. 391, L. 1993.

41-2-117. Power to adopt rules. The department may adopt rules, including definitions of terms, to carry out the purposes of this part and to prevent the circumvention or evasion of this part.

History: En. Sec. 12, Ch. 391, L. 1993; amd. Sec. 1, Ch. 260, L. 2003.

41-2-118. Penalties. An employer who violates any of the provisions of this part is guilty of a misdemeanor and is punishable as provided in 46-18-212. Each day during which a violation of this part continues constitutes a separate offense, and the employment of a minor in violation of this part constitutes, with respect to each minor employed, a separate offense.

History: En. Sec. 13, Ch. 391, L. 1993.

CHAPTER 3 CHILD ABUSE AND NEGLECT

Part 1 General

41-3-101. Declaration of policy. (1) It is the policy of the state of Montana to:

(a) provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for the children's care and protection;

(b) achieve these purposes in a family environment and preserve the unity and welfare of the family whenever possible;

(c) ensure that there is no forced removal of a child from the family based solely on an allegation of abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of harm;

(d) recognize that a child is entitled to assert the child's constitutional rights;

(e) ensure that all children have a right to a healthy and safe childhood in a permanent placement; and

(f) ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate.

(2) It is intended that the mandatory reporting of abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life whenever appropriate.

(3) In implementing this chapter, whenever it is necessary to remove a child from the child's home, the department shall, when it is in the best interests of the child, place the child with the child's noncustodial birth parent or with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, when placement with the extended family is approved by the department, prior to placing the child in an alternative protective or residential facility. Prior to approving a placement, the department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children.

(4) In implementing the policy of this section, the child's health and safety are of paramount concern.

History: (1)En. 10-1300 by Sec. 1, Ch. 328, L. 1974; Sec. 10-1300, R.C.M. 1947; (2)En. Sec. 1, Ch. 178, L. 1965; amd. Sec. 1, Ch. 292, L. 1973; Sec. 10-901, R.C.M. 1947; redes. 10-1303 by Sec. 14, Ch. 328, L. 1974; Sec. 10-1303, R.C.M. 1947; R.C.M. 1947, 10-1300, 10-1303; amd. Sec. 1, Ch. 543, L. 1979; amd. Sec. 1, Ch. 494, L. 1995; amd. Sec. 1, Ch. 564, L. 1995; amd. Sec. 1, Ch. 501, L. 1997; amd. Sec. 1, Ch. 566, L. 1999; amd. Sec. 1, Ch. 281, L. 2001; amd. Sec. 1, Ch. 311, L. 2001; amd. Sec. 1, Ch. 504, L. 2003.

41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Abandon", "abandoned", and "abandonment" mean:

(i) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

(iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

(iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(b) The terms do not include the voluntary surrender of a child to the department solely because of parental inability to access publicly funded services.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual physical or psychological harm to a child;

(ii) substantial risk of physical or psychological harm to a child; or

(iii) abandonment.

(b) (i) The term includes:

(A) actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare; or

(B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful clandestine laboratory, as prohibited by 45-9-132.

(ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

(c) In proceedings under this chapter in which the federal Indian Child Welfare Act is applicable, this term has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).

(d) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a child.

(8) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(9) "Department" means the department of public health and human services provided for in 2-15-2201.

(10) “Family group decisionmaking meeting” means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

(11) “Indian child” means any unmarried person who is under 18 years of age and who is either:

(a) a member of an Indian tribe; or

(b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(12) “Indian child’s tribe” means:

(a) the Indian tribe in which an Indian child is a member or eligible for membership; or

(b) in the case of an Indian child who is a member of or eligible for membership in more than one Indian tribe, the Indian tribe with which the Indian child has the more significant contacts.

(13) “Indian custodian” means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control have been transferred by the child’s parent.

(14) “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians recognized by:

(a) the state of Montana; or

(b) the United States secretary of the interior as being eligible for the services provided to Indians or because of the group’s status as Indians, including any Alaskan native village as defined in federal law.

(15) “Limited emancipation” means a status conferred on a youth by a court in accordance with 41-1-501 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(16) “Parent” means a biological or adoptive parent or stepparent.

(17) “Parent-child legal relationship” means the legal relationship that exists between a child and the child’s birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(18) “Permanent placement” means reunification of the child with the child’s parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

(19) “Physical abuse” means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

(20) “Physical neglect” means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child.

(21) (a) “Physical or psychological harm to a child” means the harm that occurs whenever the parent or other person responsible for the child’s welfare:

(i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;

(ii) commits or allows sexual abuse or exploitation of the child;

(iii) induces or attempts to induce a child to give untrue testimony that the child or another child was abused or neglected by a parent or other person responsible for the child’s welfare;

(iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(v) exposes or allows the child to be exposed to an unreasonable risk to the child’s health or welfare by failing to intervene or eliminate the risk; or

(vi) abandons the child.

(b) The term does not include a youth not receiving supervision solely because of parental inability to control the youth's behavior.

(22) (a) "Protective services" means services provided by the department:

(i) to enable a child alleged to have been abused or neglected to remain safely in the home;

(ii) to enable a child alleged to have been abused or neglected who has been removed from the home to safely return to the home; or

(iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances and the best interests of the child prevent reunification with parents or a return to the home.

(b) The term includes emergency protective services provided pursuant to 41-3-301, voluntary protective services provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and 6 of this chapter.

(23) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of acts of violence against another person residing in the child's home.

(b) The term may not be construed to hold a victim responsible for failing to prevent the crime against the victim.

(24) "Qualified expert witness" as used in cases involving an Indian child in proceedings subject to the federal Indian Child Welfare Act means:

(a) a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child-rearing practices;

(b) a lay expert witness who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe; or

(c) a professional person who has substantial education and experience in providing services to children and families and who possesses significant knowledge of and experience with Indian culture, family structure, and child-rearing practices in general.

(25) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(26) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(27) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(28) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(29) (a) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment.

(b) This definition does not apply to any provision of this code that is not in this chapter.

(30) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(31) “Unfounded” means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

(32) “Unsubstantiated” means that after an investigation, the investigator was unable to determine by a preponderance of the evidence that the reported abuse, neglect, or exploitation has occurred.

(33) (a) “Withholding of medically indicated treatment” means the failure to respond to an infant’s life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician’s or physicians’ reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician’s or physicians’ reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant’s life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (33), “infant” means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(34) “Youth in need of care” means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned.

History: En. 10-1301 by Sec. 2, Ch. 328, L. 1974; amd. Sec. 18, Ch. 100, L. 1977; R.C.M. 1947, 10-1301; amd. Sec. 2, Ch. 543, L. 1979; amd. Sec. 2, Ch. 511, L. 1981; amd. Sec. 31, Ch. 465, L. 1983; amd. Sec. 1, Ch. 564, L. 1983; amd. Sec. 1, Ch. 626, L. 1985; amd. Sec. 1, Ch. 463, L. 1987; amd. Sec. 36, Ch. 609, L. 1987; amd. Sec. 1, Ch. 474, L. 1989; amd. Sec. 1, Ch. 439, L. 1993; amd. Sec. 6, Ch. 458, L. 1995; amd. Sec. 2, Ch. 528, L. 1995; amd. Sec. 159, Ch. 546, L. 1995; amd. Sec. 2, Ch. 564, L. 1995; amd. Sec. 3, Ch. 514, L. 1997; amd. Secs. 2, 19(1), Ch. 516, L. 1997; amd. Sec. 2, Ch. 566, L. 1999; amd. Sec. 1, Ch. 194, L. 2001; amd. Sec. 16, Ch. 277, L. 2001; amd. Sec. 2, Ch. 311, L. 2001; amd. Sec. 1, Ch. 398, L. 2003; amd. Sec. 1, Ch. 406, L. 2003; amd. Sec. 1, Ch. 458, L. 2003; amd. Sec. 2, Ch. 504, L. 2003; amd. Sec. 1, Ch. 555, L. 2003; amd. Sec. 1, Ch. 349, L. 2005.

41-3-103. Jurisdiction. (1) In all matters arising under this chapter, the district court has jurisdiction over:

(a) a youth who is within the state of Montana for any purpose;

(b) a youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily left the state or the jurisdiction of the court; or

(c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for any purpose.

(2) Either the county where a youth is located or a county where the youth’s parent or guardian resides has initial jurisdiction over a youth alleged to be a youth in need of care.

History: En. 10-1302 by Sec. 3, Ch. 328, L. 1974; R.C.M. 1947, 10-1302; amd. Sec. 7, Ch. 458, L. 1995; amd. Sec. 1, Ch. 114, L. 2001; amd. Sec. 3, Ch. 504, L. 2003.

41-3-104. Renumbered 41-3-1122. Sec. 31, Ch. 465, L. 1983.

41-3-105. Renumbered 41-3-1125. Sec. 31, Ch. 465, L. 1983.

41-3-106. Prosecution of offenders. (1) If the evidence indicates violation of the criminal code, it is the responsibility of the county attorney to file appropriate charges against the alleged offender.

(2) The filing of a criminal charge does not toll a proceeding under this chapter.

(3) The district court has original jurisdiction under this section.

History: En. 10-1322 by Sec. 12, Ch. 328, L. 1974; R.C.M. 1947, 10-1322; amd. Sec. 3, Ch. 311, L. 2001.

41-3-107. Interagency cooperation. (1) To effectuate the purposes of this chapter, the department of public health and human services shall cooperate with and shall seek the cooperation and involvement of all appropriate public and private agencies, including health, education, social services, and law enforcement agencies; juvenile courts; and any other agency, organization, or program providing or concerned with human services related to the prevention, identification, or treatment of child abuse or neglect. The cooperation and involvement may not include joint case management but may include joint policy planning, public education, information services, staff development, and other training.

(2) The department shall enter into a cooperative agreement with other state agencies, as provided in 52-2-203, for the purpose of implementing this section.

History: En. Sec. 4, Ch. 543, L. 1979; amd. Sec. 12, Ch. 609, L. 1987; amd. Sec. 4, Ch. 655, L. 1991; amd. Sec. 160, Ch. 546, L. 1995.

41-3-108. Child protective teams. The county attorney, county commissioners, guardian ad litem, or department may convene one or more temporary or permanent interdisciplinary child protective teams. These teams may assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to the child and the child's family. The supervisor of child protective services in a local service area or the supervisor's designee shall serve as the team's coordinator. Members must include:

- (1) a social worker;
- (2) a member of a local law enforcement agency;
- (3) a representative of the medical profession;
- (4) a representative of a public school system;
- (5) a county attorney; and
- (6) if an Indian child or children are involved, someone, preferably an Indian person, knowledgeable about Indian culture and family matters.

History: En. Sec. 5, Ch. 543, L. 1979; amd. Sec. 37, Ch. 609, L. 1987; amd. Sec. 1, Ch. 67, L. 1989; amd. Sec. 161, Ch. 546, L. 1995; amd. Sec. 3, Ch. 566, L. 1999.

41-3-109. Proceedings subject to Indian Child Welfare Act. If a proceeding under this chapter involves an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the proceeding is subject to the Indian Child Welfare Act.

History: En. Sec. 16, Ch. 516, L. 1997.

41-3-110. Audio or video testimony allowed. A court may permit testimony by telephone, videoconference, or other audio or audiovisual means at any time in a proceeding pursuant to this chapter.

History: En. Sec. 1, Ch. 166, L. 2007.

Compiler's Comments

Effective Date: Section 10, Ch. 166, L. 2007, provided that this section is effective July 1, 2007.

41-3-111 reserved.

41-3-112. Guardian ad litem. (1) In every judicial proceeding, the court shall appoint a guardian ad litem for any child alleged to be abused or neglected. The department or any member of its staff who has a direct conflict of interest may not be appointed as the guardian ad litem in a judicial proceeding under this title. When necessary, the guardian ad litem may serve at public expense.

(2) The guardian ad litem must have received appropriate training that is specifically related to serving as a child's court-appointed representative.

(3) The guardian ad litem is charged with the representation of the child's best interests and shall perform the following general duties:

- (a) to conduct investigations to ascertain the facts constituting the alleged abuse or neglect;
- (b) to interview or observe the child who is the subject of the proceeding;
- (c) to have access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child's siblings and parents or custodians;
- (d) to make written reports to the court concerning the child's welfare;
- (e) to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's welfare;
- (f) to perform other duties as directed by the court; and

(g) if an attorney, to file motions, including but not limited to filing to expedite proceedings or otherwise assert the child's rights.

(4) Information contained in a report filed by the guardian ad litem or testimony regarding a report filed by the guardian ad litem is not hearsay when it is used to form the basis of the guardian ad litem's opinion as to the best interests of the child.

(5) Any party may petition the court for the removal and replacement of the guardian ad litem if the guardian ad litem fails to perform the duties of the appointment.

History: En. Sec. 14, Ch. 543, L. 1979; amd. Sec. 1, Ch. 384, L. 1985; amd. Sec. 4, Ch. 434, L. 1993; amd. Sec. 5, Ch. 516, L. 1997; amd. Sec. 7, Ch. 566, L. 1999; Sec. 41-3-303, MCA 1999; redes. 41-3-112 by Sec. 17(3)(a), Ch. 281, L. 2001; amd. Sec. 1, Ch. 382, L. 2005.

41-3-113. Appeals. (1) Appeals of court orders or decrees made under this part must be given precedence on the calendar of the supreme court over all other matters, unless otherwise provided by law.

(2) An appeal does not stay the order or decree appealed from and does not divest the presiding district court judge of jurisdiction to take steps that are necessary, in the best interests of the child, and in order to protect the health and safety of the child. The supreme court may order a stay upon application and hearing if suitable provision is made for the care and custody of the child.

(3) If the appeal results in the reversal of the order appealed, the legal status of the child reverts to the child's legal status before the entry of the order that was appealed. The child's prior legal status remains in effect until further order of the district court unless the supreme court orders otherwise.

History: En. Sec. 3, Ch. 463, L. 1987; Sec. 41-3-409, MCA 1999; redes. 41-3-113 by Sec. 17(3)(a), Ch. 281, L. 2001; amd. Sec. 4, Ch. 504, L. 2003.

41-3-114 reserved.

41-3-115. Foster care review committee — foster care reviews — permanency hearings. (1) Except as provided in Title 41, chapter 3, part 10, in every judicial district the district court judge, in consultation with the department, shall appoint a foster care review committee. The foster care review committee shall conduct foster care reviews as provided in this section and may, at the discretion of the court and absent an objection by a party to the proceeding, conduct permanency hearings as provided in 41-3-445.

(2) (a) The members of the committee must be willing to act without compensation. The committee must be composed of not less than three or more than seven members. To the extent practicable, the members of the committee must be representatives of the various socioeconomic, racial, and ethnic groups of the area served.

(b) The members must include:

(i) one representative of the department who may not be responsible for the placement of the child or have any other direct conflict of interest;

(ii) a person who is knowledgeable in the needs of children in foster care placements and who is not employed by the department or the youth court; and

(iii) if the child whose care is under review is an Indian child, a person, preferably an Indian person, who is knowledgeable about Indian cultural and family matters and who is appointed effective only for and during that review.

(c) Members may also include but are not limited to:

(i) a representative of the youth court;

(ii) a representative of a local school district;

(iii) a public health nurse;

(iv) an at-large community member with knowledge of child protective services.

(3) (a) When a child is in foster care under the supervision of the department or if payment for care is made pursuant to 52-2-611, the committee shall conduct a review of the foster care status of the child. The review must be conducted within the time limit established under the Adoption and Safe Families Act of 1997, 42 U.S.C. 675(5).

(b) The committee shall hear the case of each child in foster care to review issues that are germane to the goals of permanency and to accessing appropriate services for parents and

children. In evaluating the accessibility, availability, and appropriateness of services, the committee shall consider:

- (i) the safety, history, and specific needs of the child;
- (ii) whether an involved agency has selected services specifically relevant to the problems and needs of the child and family;
- (iii) whether appropriate services have been available to the child and family on a timely basis; and

- (iv) the results of intervention.

(c) If the department has placed a child in foster care in another state, the committee shall consider whether the placement is appropriate and in the best interests of the child. In the case of a child who will not be returned to the parent, the committee shall consider both in-state and out-of-state placement options.

(d) The committee may hear the case of a child who remains in or returns to the child's home and for whom the department retains legal custody.

(4) (a) Prior to the beginning of the review, reasonable notice of each review must be sent to the following:

- (i) the parents of the child or their attorneys;
- (ii) if applicable, the foster parents, a relative caring for the child, the preadoptive parents, or the surrogate parents;
- (iii) the child who is the subject of the review if the child is 12 years of age or older;
- (iv) the child's attorney, if any;
- (v) the guardian ad litem;
- (vi) the court-appointed attorney or special advocate of the child; and
- (vii) the child's Indian tribe if the child is an Indian.

(b) When applicable, notice of each review may be sent to other interested persons who are authorized by the committee to receive notice.

(c) All persons receiving notice are subject to the confidentiality provisions of 41-3-205.

(d) If a foster care review is held in conjunction with a permanency hearing, notice of both proceedings must be provided.

(e) If a foster care review is held in conjunction with a permanency hearing, notice must be provided to the attorney who initiated the child abuse or neglect proceedings.

(5) The committee may elect to hold joint or separate reviews for groups of siblings, but findings and recommendations made by the committee must be specific to each child.

(6) After reviewing each case, the committee shall prepare written findings and recommendations with respect to:

- (a) the continuing need for the placement and the appropriateness and safety of the placement;
- (b) compliance with the case plan;
- (c) the progress that has been made toward alleviating the need for placement;
- (d) a likely date by which the child may be returned home or by which a permanent placement may be finalized.

(7) Following the permanency hearing, the committee shall send copies of its minutes and written findings and recommendations to the court and to the parties. If a party objects to the findings and recommendations, the party may within 10 days serve written objections upon the other party and file them with the court. A request for a hearing before the court upon the objections may be made by a party by motion. The court, after hearing the objections or upon its own motion and without objection, may adopt the findings and recommendations and shall issue an appropriate order.

(8) Because of the individual privacy involved, meetings of the committee, reports of the committee, and information on individuals' cases shared by committee members are confidential and subject to the confidentiality requirements of the department.

(9) The committee is subject to the call of the district court judge to meet and confer with the judge on all matters pertaining to the foster care of a child before the district court.

History: En. Sec. 2, Ch. 297, L. 1981; amd. Sec. 1, Ch. 201, L. 1983; MCA 1981, 41-5-807; amd. and redes. 41-3-1115 by Sec. 31, Ch. 465, L. 1983; amd. Sec. 1, Ch. 260, L. 1987; amd. Sec. 51, Ch. 609, L. 1987; amd. Sec. 16,

Ch. 610, L. 1993; amd. Sec. 19, Ch. 311, L. 2001; amd. Sec. 13, Ch. 570, L. 2001; Sec. 41-3-1115, MCA 1999; reded. 41-3-115 by Sec. 17(3)(a), Ch. 281, L. 2001; amd. Sec. 2, Ch. 382, L. 2005; amd. Sec. 2, Ch. 166, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 166 inserted (3)(c) requiring the committee to consider the appropriateness of placement of a child out of state and to consider both in-state and out-of-state placement when a child will not be returned to the parent; and made minor changes in style. Amendment effective July 1, 2007.

41-3-116 and 41-3-117 reserved.

41-3-118. Purpose. The intent of 41-3-119 is to provide reimbursement for mental health outpatient counseling services to foster parents who experience the death of a foster child placed with them by the department or a licensed child placing agency. Many of the children have disabilities, terminal illnesses, or other special needs, and often these children spend their childhood in the homes of foster parents. The death of a child is a traumatic experience, and the legislature finds that providing reimbursement for counseling is a necessary support to those persons who are willing to open their homes to foster children who need a stable and safe environment.

History: En. Sec. 1, Ch. 127, L. 1999; Sec. 41-3-1160, MCA 1999; reded. 41-3-118 by Sec. 17(3)(a), Ch. 281, L. 2001.

41-3-119. Foster parent counseling services. (1) A person who provides substitute care to a foster child who dies while residing in a youth care facility must be offered reimbursement for mental health outpatient counseling services at the expense of the department.

(2) Upon the death of a foster child in substitute care, the department shall provide information about available reimbursement for mental health outpatient counseling services for the person or persons who were providing care to the foster child.

(3) The reimbursement for mental health outpatient counseling services must be available for up to 1 year in duration by a provider of the person's choice at an amount equivalent to that offered as a benefit to state employees under 2-18-702, subject to the same maximum benefit levels and copayments.

History: En. Sec. 2, Ch. 127, L. 1999; Sec. 41-3-1161, MCA 1999; reded. 41-3-119 by Sec. 17(3)(a), Ch. 281, L. 2001.

41-3-120. Liability insurance for foster parents. (1) The department shall provide for liability and property damage insurance for a foster parent providing foster care services to children placed by the department and for a foster parent providing therapeutic foster care services under the auspices of a licensed child-placing agency.

(2) The state shall pay the cost of the premium for each policy issued under subsection (1). The foster parent may be required, as provided by rule, to pay a reasonable deductible for personal injury or property damage.

(3) The department shall adopt rules for the provision of insurance coverage to foster parents as provided in this section, including rules on premium payment and any deductibles required.

History: En. Sec. 1, Ch. 165, L. 2007.

Compiler's Comments

Effective Date: Section 4, Ch. 165, L. 2007, provided that this section is effective July 1, 2007.

41-3-121 through 41-3-130 reserved.

41-3-131. Rulemaking authority. The department shall adopt rules necessary to carry out the purposes of this chapter.

History: En. Sec. 31, Ch. 311, L. 2001.

Part 2 Reports and Investigations

41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the department of public health and human services.

(2) Professionals and officials required to report are:

- (a) a physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;
 - (b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;
 - (c) religious healers;
 - (d) school teachers, other school officials, and employees who work during regular school hours;
 - (e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care program, or an operator or employee of a child-care facility;
 - (f) a foster care, residential, or institutional worker;
 - (g) a peace officer or other law enforcement official;
 - (h) a member of the clergy, as defined in 15-6-201(2)(a);
 - (i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of alleged abuse or neglect; or
 - (j) an employee of an entity that contracts with the department to provide direct services to children.
- (3) A professional listed in subsection (2)(a) or (2)(b) involved in the delivery or care of an infant shall report to the department any infant known to the professional to be affected by a dangerous drug, as defined in 50-32-101.
- (4) Any person may make a report under this section if the person knows or has reasonable cause to suspect that a child is abused or neglected.
- (5) (a) Except as provided in subsection (5)(b) or (5)(c), a person listed in subsection (2) may not refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.
- (b) A member of the clergy or a priest is not required to make a report under this section if:
- (i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the member of the clergy or the priest in that person's capacity as a member of the clergy or as a priest;
 - (ii) the statement was intended to be a part of a confidential communication between the member of the clergy or the priest and a member of the church or congregation; and
 - (iii) the person who made the statement or confession does not consent to the disclosure by the member of the clergy or the priest.
- (c) A member of the clergy or a priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice.
- (6) The reports referred to under this section must contain:
- (a) the names and addresses of the child and the child's parents or other persons responsible for the child's care;
 - (b) to the extent known, the child's age and the nature and extent of the child's injuries, including any evidence of previous injuries;
 - (c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible for the injury or neglect; and
 - (d) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter.

History: En. Sec. 2, Ch. 178, L. 1965; amd. Sec. 2, Ch. 292, L. 1973; Sec. 10-902, R.C.M. 1947; redes. 10-1304 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1304; amd. Sec. 6, Ch. 543, L. 1979; amd. Sec. 3, Ch. 511, L. 1981; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 1, Ch. 79, L. 1989; amd. Sec. 1, Ch. 785, L. 1991; amd. Sec. 8, Ch. 458, L. 1995; amd. Sec. 162, Ch. 546, L. 1995; amd. Sec. 4, Ch. 514, L. 1997; amd. Sec. 4, Ch. 311, L. 2001; amd. Sec. 3, Ch. 382, L. 2005; amd. Sec. 3, Ch. 166, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 166 in (2)(c) at beginning deleted "Christian Science practitioners and"; in (2)(h) after "clergy" inserted "as defined in 15-6-201(2)(a)"; inserted (3) requiring a professional involved in the delivery or care of an infant to report to the department any infant known to be affected by a dangerous drug; and made minor changes in style. Amendment effective July 1, 2007.

41-3-202. Action on reporting. (1) Upon receipt of a report that a child is or has been abused or neglected, the department shall promptly assess the information contained in the report and make a determination regarding the level of response required and the timeframe within which action must be initiated. If the department determines that an investigation is required, a social worker, the county attorney, or a peace officer shall promptly conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect of the child. The investigation may include an investigation at the home of the child involved, the child's school or day-care facility, or any other place where the child is present and into all other nonfinancial matters that in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care, except as necessary to ascertain eligibility for state or federal assistance programs or to comply with the provisions of 41-3-446.

(2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous report is received. However, the investigation must within 48 hours result in the development of independent, corroborative, and attributable information in order for the investigation to continue. Without the development of independent, corroborative, and attributable information, a child may not be removed from the home.

(3) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer, consistent with reasonable medical practice, has the right of access to the child for interviews, photographs, and securing physical evidence and has the right of access to relevant hospital and medical records pertaining to the child. If an interview of the child is considered necessary, the social worker, county attorney, or peace officer may conduct an interview of the child. The interview may be conducted in the presence of the parent or guardian or an employee of the school or day-care facility attended by the child.

(4) Subject to 41-3-205(3), if the child's interview is audiotaped or videotaped, an unedited audiotape or videotape with audio track must be made available, upon request, for unencumbered review by the family.

(5) (a) If from the investigation the department has reasonable cause to suspect that the child suffered abuse or neglect, the department may provide emergency protective services to the child, pursuant to 41-3-301, or voluntary protective services pursuant to 41-3-302, and may provide protective services to any other child under the same care. The department shall:

(i) after interviewing the parent or guardian, if reasonably available, document its determination regarding abuse or neglect of a child; and

(ii) notify the child's family of its investigation and determination, unless the notification can reasonably be expected to result in harm to the child or other person.

(b) If from the investigation it is determined that the child has not suffered abuse or neglect and the initial report is determined to be unfounded, the department and the social worker, county attorney, or peace officer who conducted the investigation into the circumstances surrounding the allegations of abuse or neglect shall destroy all of their records concerning the report and the investigation. The destruction must be completed within 30 days of the determination that the child has not suffered abuse or neglect.

(c) (i) If the report is unsubstantiated, the department and the social worker who conducted the investigation into the circumstances surrounding the initial allegations of abuse or neglect shall destroy all of the records, except for medical records, concerning the unsubstantiated report and the investigation within 30 days after the end of the 3-year period starting from the date the report was determined to be unsubstantiated, unless:

(A) there had been a previous or there is a subsequent substantiated report concerning the same person; or

(B) an order has been issued under this chapter based on the circumstances surrounding the initial allegations.

(ii) A person who is the subject of an unsubstantiated report that was made prior to October 1, 2003, and after which a period of 3 years has elapsed without there being submitted a subsequent substantiated report or an order issued under this chapter based on the

circumstances surrounding the initial allegations may request that the department destroy all of the records concerning the unsubstantiated report as provided in subsection (5)(c)(i).

(6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department and, upon request, to the family. Subject to subsections (5)(b) and (5)(c), the department shall maintain a record system documenting investigations and determinations of child abuse and neglect cases.

(7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the department.

History: En. Sec. 3, Ch. 178, L. 1965; amd. Sec. 3, Ch. 292, L. 1973; Sec. 10-903, R.C.M. 1947; redes. 10-1305 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1305; amd. Sec. 8, Ch. 543, L. 1979; amd. Sec. 3, Ch. 567, L. 1979; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 1, Ch. 126, L. 1989; amd. Sec. 1, Ch. 329, L. 1993; amd. Sec. 1, Ch. 146, L. 1995; amd. Sec. 163, Ch. 546, L. 1995; amd. Sec. 3, Ch. 564, L. 1995; amd. Sec. 5, Ch. 514, L. 1997; amd. Sec. 3, Ch. 516, L. 1997; amd. Sec. 4, Ch. 566, L. 1999; amd. Sec. 5, Ch. 311, L. 2001; amd. Sec. 2, Ch. 406, L. 2003; amd. Sec. 2, Ch. 555, L. 2003; amd. Sec. 4, Ch. 382, L. 2005.

41-3-203. Immunity from liability. (1) Anyone investigating or reporting any incident of child abuse or neglect under 41-3-201 or 41-3-202, participating in resulting judicial proceedings, or furnishing hospital or medical records as required by 41-3-202 is immune from any liability, civil or criminal, that might otherwise be incurred or imposed unless the person was grossly negligent or acted in bad faith or with malicious purpose or provided information knowing the information to be false.

(2) A person who provides information pursuant to 41-3-201 that is substantiated by the department or a person who uses information received pursuant to 41-3-205 that is substantiated by the department to refuse to hire or to discharge a prospective or current employee, volunteer, or other person who through employment or volunteer activities may have unsupervised contact with children is immune from civil liability unless the person acted in bad faith or with malicious purpose.

History: En. Sec. 4, Ch. 178, L. 1965; Sec. 10-904, R.C.M. 1947; redes. 10-1306 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1306; amd. Sec. 9, Ch. 543, L. 1979; amd. Sec. 1, Ch. 181, L. 1993; amd. Sec. 9, Ch. 458, L. 1995; amd. Sec. 5, Ch. 566, L. 1999.

41-3-204. Admissibility and preservation of evidence. (1) In any proceeding resulting from a report made pursuant to the provisions of this chapter or in any proceeding for which the report or its contents are sought to be introduced into evidence, the report or its contents or any other fact related to the report or to the condition of the child who is the subject of the report may not be excluded on the ground that the matter is or may be the subject of a privilege related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

(2) A person or official required to report under 41-3-201 may take or cause to be taken photographs of the area of trauma visible on a child who is the subject of a report. The cost of photographs taken under this section must be paid by the department.

(3) When a person required to report under 41-3-201 finds visible evidence that a child has suffered abuse or neglect, the person shall include in the report either a written description or photographs of the evidence.

(4) A physician, either in the course of providing medical care to a minor or after consultation with child protective services, the county attorney, or a law enforcement officer, may require x-rays to be taken when, in the physician's professional opinion, there is a need for radiological evidence of suspected abuse or neglect. X-rays may be taken under this section without the permission of the parent or guardian. The cost of the x-rays ordered and taken under this section must be paid by the county child protective service agency.

(5) All written, photographic, or radiological evidence gathered under this section must be sent to the local affiliate of the department at the time that the written confirmation report is sent or as soon after the report is sent as is possible. If a confirmation report is not made, the evidence and the initial report must be destroyed as provided in 41-3-202.

History: En. Sec. 5, Ch. 178, L. 1965; Sec. 10-905, R.C.M. 1947; redes. 10-1307 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1307; amd. Sec. 10, Ch. 543, L. 1979; amd. Sec. 38, Ch. 609, L. 1987; amd. Sec. 2, Ch. 146, L. 1995; amd. Sec. 189, Ch. 42, L. 1997; amd. Sec. 6, Ch. 514, L. 1997; amd. Sec. 4, Ch. 516, L. 1997.

41-3-205. Confidentiality — disclosure exceptions. (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (7) and (8), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, a member of the United States congress, or a state legislator, if disclosure is limited to confirmation of factual information regarding how the case was handled

and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's assigned attorney, guardian ad litem, or special advocate.

(5) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(6) The confidentiality provisions of this section must be construed to allow a court of this state to share information with other courts of this state or of another state when necessary to expedite the interstate placement of children.

(7) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(8) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (7) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(9) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(10) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost.

History: En. 10-1308 by Sec. 4, Ch. 328, L. 1974; R.C.M. 1947, 10-1308; amd. Sec. 11, Ch. 543, L. 1979; amd. Sec. 1, Ch. 287, L. 1987; amd. Sec. 39, Ch. 609, L. 1987; amd. Sec. 1, Ch. 110, L. 1989; amd. Sec. 2, Ch. 126, L. 1989; amd. Sec. 2, Ch. 510, L. 1991; amd. Sec. 5, Ch. 655, L. 1991; amd. Sec. 15, Ch. 610, L. 1993; amd. Sec. 10, Ch. 458, L. 1995; amd. Sec. 164, Ch. 546, L. 1995; amd. Sec. 4, Ch. 564, L. 1995; amd. Sec. 7, Ch. 514, L. 1997; amd. Sec. 5, Ch. 550, L. 1997; amd. Sec. 6, Ch. 566, L. 1999; amd. Sec. 2, Ch. 281, L. 2001; amd. Sec. 6, Ch. 311, L. 2001; amd. Sec. 1, Ch. 570, L. 2001; amd. Sec. 45, Ch. 571, L. 2001; amd. Sec. 5, Ch. 504, L. 2003; amd. Sec. 2, Ch. 349, L. 2005; amd. Sec. 29, Ch. 449, L. 2005; amd. Sec. 4, Ch. 166, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 166 inserted (6) allowing the sharing of information between courts when necessary to expedite interstate placement of children; and made minor changes in style. Amendment effective July 1, 2007.

41-3-206. Procedure in case of child's death. (1) A person or official required to report by law who has reasonable cause to suspect that a child has died as a result of child abuse or neglect shall report the person's suspicion to the appropriate medical examiner or law enforcement officer. Any other person who has reasonable cause to suspect that a child has died as a result of child abuse or neglect may report the person's suspicion to the appropriate medical examiner or law enforcement officer.

(2) The medical examiner or coroner shall investigate the report and submit findings, in writing, to the local law enforcement agency, the appropriate county attorney, the local child protective service, the family of the deceased child, and, if the person making the report is a physician, the physician.

History: En. Sec. 7, Ch. 543, L. 1979; amd. Sec. 5, Ch. 564, L. 1995.

41-3-207. Penalty for failure to report. (1) Any person, official, or institution required by law to report known or suspected child abuse or neglect who fails to do so or who prevents another person from reasonably doing so is civilly liable for the damages proximately caused by such failure or prevention.

(2) Any person or official required by law to report known or suspected child abuse or neglect who purposely or knowingly fails to report known child abuse or neglect or purposely or knowingly prevents another person from doing so is guilty of a misdemeanor.

History: En. Sec. 15, Ch. 543, L. 1979; amd. Sec. 1, Ch. 367, L. 1985.

41-3-208. Rulemaking authority. (1) The department of public health and human services shall adopt rules to govern the procedures used by department personnel in preparing and processing reports and in making investigations authorized by this chapter.

(2) The department may adopt rules to govern the disclosure of case records containing reports of child abuse and neglect.

History: En. Sec. 1, Ch. 567, L. 1979; amd. Sec. 31, Ch. 465, L. 1983; amd. Sec. 2, Ch. 287, L. 1987; amd. Sec. 40, Ch. 609, L. 1987; amd. Sec. 7, Ch. 696, L. 1991; amd. Sec. 165, Ch. 546, L. 1995.

Part 3 Protective Care

Part 4 Abuse or Neglect Proceedings

41-3-422. Abuse and neglect petitions — burden of proof. (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

- (i) immediate protection and emergency protective services, as provided in 41-3-427;
- (ii) temporary investigative authority, as provided in 41-3-433;
- (iii) temporary legal custody, as provided in 41-3-442;
- (iv) long-term custody, as provided in 41-3-445;
- (v) termination of the parent-child legal relationship, as provided in 41-3-607;
- (vi) appointment of a guardian pursuant to 41-3-444;
- (vii) a determination that preservation or reunification services need not be provided; or
- (viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by:

(a) an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition; and

(b) a separate notice to the court stating any statutory time deadline for a hearing.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

- (i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;
- (ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;
- (iii) a preponderance of the evidence for an order of long-term custody; or
- (iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child Welfare Act apply.

(6) (a) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(b) Copies of all other petitions must be served upon the person or the person's attorney of record by certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429. If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person to whom the notice was mailed appears at the hearing.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall immediately provide for the appointment or assignment of an attorney as provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the interests of justice require.

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and has the right to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(10) An abuse and neglect petition must:

- (a) state the nature of the alleged abuse or neglect and of the relief requested;
- (b) state the full name, age, and address of the child and the name and address of the child's parents or guardian or person having legal custody of the child;

(c) state the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

(11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-425.

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) If appropriate, orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws.

History: En. 10-1310 by Sec. 6, Ch. 328, L. 1974; amd. Sec. 20, Ch. 100, L. 1977; R.C.M. 1947, 10-1310; amd. Sec. 4, Ch. 567, L. 1979; amd. Sec. 5, Ch. 511, L. 1981; amd. Sec. 2, Ch. 659, L. 1985; amd. Sec. 2, Ch. 463, L. 1987; amd. Sec. 43, Ch. 609, L. 1987; amd. Sec. 2, Ch. 329, L. 1993; amd. Sec. 11, Ch. 458, L. 1995; amd. Sec. 168, Ch. 546, L. 1995; amd. Sec. 6, Ch. 516, L. 1997; amd. Sec. 1, Ch. 428, L. 1999; amd. Sec. 8, Ch. 566, L. 1999; amd. Sec. 4, Ch. 83, L. 2001; amd. Sec. 2, Ch. 194, L. 2001; amd. Secs. 4, 18(2), Ch. 281, L. 2001; amd. Sec. 7, Ch. 311, L. 2001; Sec. 41-3-401, MCA 1999; reds. 41-3-422 by Sec. 17(2), Ch. 281, L. 2001; amd. Sec. 1, Ch. 189, L. 2003; amd. Sec. 7, Ch. 504, L. 2003; amd. Sec. 1, Ch. 118, L. 2005; amd. Sec. 30, Ch. 449, L. 2005; amd. Sec. 5, Ch. 166, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 166 in (9)(a) near end of second sentence before "to be heard" substituted "has the right" for "must be given an opportunity". Amendment effective July 1, 2007.

41-3-423. Reasonable efforts required to prevent removal of child or to return — exemption — findings — permanency plan. (1) The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state. Reasonable efforts include but are not limited to voluntary protective services agreements, development of individual written case plans specifying state efforts to reunify families, placement in the least disruptive setting possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely progress toward reunification or permanent placement. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern.

(2) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or reunification services need not be provided. If an indigent parent is not already represented by counsel, the court shall immediately provide for the appointment or assignment of counsel to represent the indigent parent in accordance with the provisions of 41-3-425. A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; or

(ii) recorded on the child's birth certificate as the child's father.

(4) A judicial finding that preservation or reunification services are not necessary under this section must be supported by clear and convincing evidence.

(5) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts, including consideration of both in-state and out-of-state permanent placement options for the child, must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan, including, if appropriate, placement in another state, and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning, including identifying in-state and out-of-state placements, may be used.

(7) When determining whether the department has made reasonable efforts to prevent the necessity of removal of a child from the child's home or to reunify families that have been separated by the state, the court shall review the services provided by the agency including, if applicable, protective services provided pursuant to 41-3-302.

History: En. 10-1311 by Sec. 7, Ch. 328, L. 1974; amd. Sec. 21, Ch. 100, L. 1977; R.C.M. 1947, 10-1311(4), (5); amd. Sec. 4, Ch. 659, L. 1985; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 1, Ch. 696, L. 1991; amd. Sec. 1, Ch. 112, L. 1993; amd. Sec. 1, Ch. 362, L. 1993; amd. Sec. 13, Ch. 458, L. 1995; amd. Sec. 3, Ch. 501, L. 1997; amd. Sec. 7, Ch.

516, L. 1997; amd. Sec. 9, Ch. 566, L. 1999; amd. Sec. 5, Ch. 83, L. 2001; amd. Secs. 8, 18(3), Ch. 281, L. 2001; amd. Sec. 9, Ch. 311, L. 2001; Sec. 41-3-403, MCA 1999; redes. 41-3-423 by Sec. 17(2), Ch. 281, L. 2001; amd. Sec. 5, Ch. 555, L. 2003; amd. Sec. 31, Ch. 449, L. 2005; amd. Sec. 6, Ch. 166, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 166 in (5) near middle after “efforts” inserted “including consideration of both in-state and out-of-state permanent placement options for the child”; in (6) near end of first sentence after “plan” inserted “including, if appropriate, placement in another state” and near middle of third sentence after “planning” inserted “including identifying in-state and out-of-state placements”; and made minor changes in style. Amendment effective July 1, 2007.

41-3-424. Dismissal. Unless the petition has been previously dismissed, the court shall dismiss an abuse and neglect petition on the motion of a party, or on its own motion, in any case in which all of the following criteria are met:

(1) a child who has been placed in foster care is reunited with the child's parents and returned home;

(2) the child remains in the home for a minimum of 6 months with no additional confirmed reports of child abuse or neglect; and

(3) the department determines and informs the court that the issues that led to department intervention have been resolved and that no reason exists for further department intervention or monitoring.

History: En. Sec. 6, Ch. 555, L. 2003.

41-3-425. Right to counsel. (1) Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition.

(2) Except as provided in subsection (3), the court shall immediately appoint or have counsel assigned for:

(a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422;

(b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422; and

(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.

(3) When appropriate, the court may appoint or have counsel assigned for a guardian ad litem or a court-appointed special advocate involved in a proceeding under a petition filed pursuant to 41-3-422.

(4) The court's action pursuant to subsection (2) or (3) must be to order the office of state public defender, provided for in 47-1-201, to immediately assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, pending a determination of eligibility pursuant to 47-1-111.

History: En. Sec. 15, Ch. 449, L. 2005; amd. Sec. 1, Ch. 511, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 511 in (2)(b) after “youth” deleted “or guardian ad litem”; inserted (3) allowing appointment of counsel for guardian ad litem in a proceeding under 41-3-422; in (4) at beginning deleted “Beginning July 1, 2006” and inserted reference to subsection (3); and made minor changes in style. Amendment effective May 16, 2007.

41-3-426 reserved.

41-3-427. Petition for immediate protection and emergency protective services — order — service. (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for immediate protection and emergency protective services. In implementing the policy of this section, the child's health and safety are of paramount concern.

(b) A petition for immediate protection and emergency protective services must state the specific authority requested and the facts establishing probable cause that a child is abused or neglected or is in danger of being abused or neglected.

(c) The petition for immediate protection and emergency protective services must be supported by an affidavit signed by a representative of the department stating in detail the facts upon which the request is based. The petition or affidavit of the department must contain information regarding statements, if any, made by the parents detailing the parents' statement

of the facts of the case. The parents, if available in person or by electronic means, must be given an opportunity to present evidence to the court before the court rules on the petition.

(d) The petition for immediate protection and emergency protective services must include a notice advising the parents, parent, guardian, or other person having physical custody of the youth that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with a social worker concerning emergency protective services. Reasonable accommodation must be made in scheduling an in-person meeting with the social worker.

(2) The person filing the petition for immediate protection and emergency protective services has the burden of presenting evidence establishing probable cause for the issuance of an order for immediate protection of the child, except as provided by the federal Indian Child Welfare Act, if applicable. The court shall consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable cause, the court may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

(a) the right of entry by a peace officer or department worker;

(b) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;

(c) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;

(d) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;

(e) a requirement that the parent provide the department with the name and address of the other parent, if known, unless parental rights to the child have been terminated;

(f) a requirement that the parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and

(g) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(3) An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.

(4) The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with the department until further order.

(5) The petition must be served as provided in 41-3-422.

History: En. 10-1311 by Sec. 7, Ch. 328, L. 1974; amd. Sec. 21, Ch. 100, L. 1977; R.C.M. 1947, 10-1311(1) thru (3); amd. Sec. 3, Ch. 659, L. 1985; amd. Sec. 44, Ch. 609, L. 1987; amd. Sec. 12, Ch. 458, L. 1995; amd. Sec. 169, Ch. 546, L. 1995; amd. Sec. 2, Ch. 501, L. 1997; amd. Sec. 5, Ch. 281, L. 2001; amd. Sec. 8, Ch. 311, L. 2001; Sec. 41-3-402, MCA 1999; redes. 41-3-427 by Sec. 17(2), Ch. 281, L. 2001; amd. Sec. 8, Ch. 504, L. 2003; amd. Sec. 2, Ch. 422, L. 2005.

41-3-428. Service of process — service by publication — effect. (1) Except as otherwise provided in this chapter, service of process must be made as provided in the Montana Rules of Civil Procedure.

(2) If a person cannot be served personally or by certified mail, the person may be served by publication as provided in 41-3-429. Publication constitutes conclusive evidence of service, and a hearing must then proceed at the time and date set, with or without the appearance of the person served by publication. At or after the hearing, the court may issue an order that will adjudicate the interests of the person served by publication.

(3) If a parent cannot be identified or found prior to the initial hearings allowed by part 4, the court may grant the following relief, pending service by publication on the parent who cannot be identified or found and based upon service of process on only the parent, guardian, or other person having legal custody of the child:

- (a) immediate protection;
- (b) temporary investigative authority; and
- (c) temporary legal custody.

History: En. Sec. 1, Ch. 83, L. 2001; amd. Sec. 2, Ch. 118, L. 2005.

41-3-429. Service by publication — summons — form. (1) Before service by publication is authorized in a proceeding under this chapter, the department shall file with the court an affidavit stating that, after due diligence, the person cannot be identified or found and stating the diligent efforts made to identify, locate, and serve the person. The affidavit is sufficient evidence of the diligence of any inquiry made by the department. The affidavit may be combined with any other affidavit filed by the department. Upon complying with this subsection, the department may obtain an order for the service to be made upon the party by publication. The order may be issued by either the judge or the clerk of the court.

(2) Service by publication must be made by publishing notice three times, once each week for 3 successive weeks:

(a) in a newspaper in a community in which the publication can reasonably be calculated to be seen by the person, based upon the last-known address or whereabouts, if known, of the person if in the state of Montana; or

(b) if no last-known address exists, if the last-known address is outside Montana, or if the identity of the person is unknown, in a newspaper in the county in which the action is pending, if a newspaper is published in the county, and, if a newspaper is not published in the county, in a newspaper published in an adjoining county and having a general circulation in the county.

(3) Service by publication is complete on the date of the last publication required by subsection (2).

(4) A summons required under this chapter must:

(a) be directed to the parent, legal guardian, other person having legal custody of the child, or any other person who is required to be served; and

(b) be signed by the clerk of court, be under the seal of the court, and contain:

- (i) the name of the court and the cause number;
- (ii) the initials of the child who is the subject of the proceedings;
- (iii) the name of the child's parents, if known;
- (iv) the time within which an interested person shall appear;
- (v) the department's address;

(vi) a statement in general terms of the nature of the proceedings, including the date and place of birth of the child, the date and place of the hearing, and the phone number of the clerk of the court in which the hearing is scheduled; and

(vii) notification apprising the person served by publication that failure to appear at the hearing will constitute a denial of interest in the child, which denial may result, without further notice of this proceeding or any subsequent proceeding, in judgment by default being entered for the relief requested in the petition.

History: En. Sec. 2, Ch. 83, L. 2001; amd. Sec. 3, Ch. 118, L. 2005.

41-3-430. Putative fathers — service by publication — continuation of proceedings. (1) Reasonable efforts must be made to resolve issues of paternity, if any, as early as possible in proceedings under this chapter. The department shall make every reasonable effort to obtain service of process of a petition on a putative father, as defined in 42-2-201.

(2) If a putative father cannot be served personally, the putative father may be served by publication as provided in 41-3-428 and 41-3-429.

(3) Regardless of the provisions of subsections (1) and (2), if a putative father cannot be identified or found prior to the initial hearings allowed by part 4, the court may grant the following relief, pending service by publication on the putative father and based upon service of process on only the parent, guardian, or other person having legal custody of the child:

- (a) immediate protection;

- (b) temporary investigative authority; and
- (c) temporary legal custody.
- (4) Throughout the proceedings, the court, in its discretion, may order the department to continue to attempt to identify, locate, and serve a putative father.
- (5) A court may order termination of the parental rights of a putative father under this chapter based on service by publication if the provisions of 41-3-428 and 41-3-429 have been met.

History: En. Sec. 3, Ch. 83, L. 2001.

41-3-431 reserved.

41-3-432. Show cause hearing — order. (1) (a) Except as provided in the federal Indian Child Welfare Act, a show cause hearing must be conducted within 20 days of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any petition to which the time deadline applies.

(b) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(c) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act, if applicable.

(3) At the show cause hearing, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel and may be appointed or assigned counsel as provided for in 41-3-425.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act, if applicable, have been met.

(5) The court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that a citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court.

History: En. Sec. 6, Ch. 281, L. 2001; amd. Sec. 2, Ch. 189, L. 2003; amd. Sec. 9, Ch. 504, L. 2003; amd. Sec. 3, Ch. 349, L. 2005; amd. Sec. 32, Ch. 449, L. 2005; amd. Sec. 7, Ch. 166, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 166 in (3) deleted former fourth sentence that read: "The court may permit testimony by telephone, audiovisual means, or other electronic means." Amendment effective July 1, 2007.

41-3-433. Temporary investigative authority. The department may petition the court for authorization to conduct an investigation into allegations of child abuse, neglect, or abandonment when necessary. An order for temporary investigative authority may not be issued for a period longer than 90 days. The petition must be served as provided in 41-3-422.

History: En. Sec. 7, Ch. 281, L. 2001.

41-3-434. Stipulations. Subject to approval by the court, the parties may stipulate to any of the following:

(1) the child meets the definition of a youth in need of care by the preponderance of the evidence;

(2) a treatment plan, if the child has been adjudicated a youth in need of care;

(3) the disposition; or

(4) extension of the timeframes contained in this chapter, except for the timeframe contained in 41-3-445.

History: En. Sec. 14, Ch. 281, L. 2001; en. Sec. 32, Ch. 311, L. 2001; amd. Sec. 10, Ch. 504, L. 2003.

41-3-435 and 41-3-436 reserved.

41-3-437. Adjudication — temporary disposition — findings — order. (1) Upon the filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under 41-3-432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) The court may make an adjudication on a petition under 41-3-422 if the court determines by a preponderance of the evidence, except as provided in the federal Indian Child Welfare Act, if applicable, that the child is a youth in need of care. Except as otherwise provided in this part, the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an adjudicatory hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that resulted in state intervention and upon which disposition, case work, court review, and possible termination are based.

(3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the child. Hearsay evidence of statements made by the affected youth is admissible according to the Montana Rules of Evidence.

(4) In a case in which abandonment has been alleged by the county attorney, the attorney general, or an attorney hired by the county, the court shall hear offered evidence, including

evidence offered by a person appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

(a) the extent to which the child has been cared for, nurtured, or supported by a person other than the child's parents; and

(b) whether the child was placed or allowed to remain by the parents with another person for the care of the child, and, if so, then the court shall accept evidence regarding:

(i) the intent of the parents in placing the child or allowing the child to remain with that person; and

(ii) the circumstances under which the child was placed or allowed to remain with that other person, including:

(A) whether a parent requesting return of the child was previously prevented from doing so as a result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

(B) whether the child was originally placed with the other person to allow the parent to seek employment or attend school.

(5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

(6) (a) If the court determines that the child is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.

(b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 20 days, as provided in 41-3-438(1), and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-427(2).

(7) (a) Before making an adjudication, the court may make oral findings, and following the adjudicatory hearing, the court shall make written findings on issues, including but not limited to the following:

(i) which allegations of the petition have been proved or admitted, if any;

(ii) whether there is a legal basis for continued court and department intervention; and

(iii) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home.

(b) The court may order:

(i) terms for visitation, support, and other intrafamily communication pending disposition if the child is to be placed or to remain in temporary out-of-home care prior to disposition;

(ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition hearing that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not already done;

(iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child to remain in the home; and

(v) the department to continue efforts to notify noncustodial parents.

(8) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

History: En. 10-1312 by Sec. 8, Ch. 328, L. 1974; R.C.M. 1947, 10-1312; amd. Sec. 19, Ch. 543, L. 1979; amd. Sec. 5, Ch. 567, L. 1979; amd. Sec. 5, Ch. 659, L. 1985; amd. Sec. 14, Ch. 458, L. 1995; amd. Sec. 8, Ch. 516, L. 1997; amd. Sec. 3, Ch. 481, L. 1999; amd. Sec. 10, Ch. 566, L. 1999; amd. Sec. 3, Ch. 194, L. 2001; amd. Sec. 9, Ch. 281, L. 2001; amd. Sec. 10, Ch. 311, L. 2001; Sec. 41-3-404, MCA 1999; red. 41-3-437 by Sec. 17(2), Ch. 281, L. 2001; amd. Sec. 11, Ch. 504, L. 2003; amd. Sec. 55, Ch. 130, L. 2005; amd. Sec. 4, Ch. 349, L. 2005.

41-3-438. Disposition — hearing — order. (1) Unless a petition is dismissed or unless otherwise stipulated by the parties pursuant to 41-3-434 or ordered by the court, a dispositional

hearing must be held on every petition filed under this chapter within 20 days after an adjudicatory order has been entered under 41-3-437. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) (a) A dispositional order must be made after a dispositional hearing that is separate from the adjudicatory hearing under 41-3-437. The hearing process must be scheduled and structured so that dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the dispositional hearing.

(b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:

(i) all required reports are available and have been received by all parties or their attorneys at least 5 working days in advance of the hearing; and

(ii) the judge has an opportunity to review the reports after the adjudication.

(c) The dispositional hearing may be held prior to the entry of written findings required by 41-3-437.

(3) If a child is found to be a youth in need of care under 41-3-437, the court may enter its judgment, making any of the following dispositions to protect the welfare of the child:

(a) permit the child to remain with the child's custodial parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) order the department to evaluate the noncustodial parent as a possible caretaker;

(c) order the temporary placement of the child with the noncustodial parent, superseding any existing custodial order, and keep the proceeding open pending completion by the custodial parent of any treatment plan ordered pursuant to 41-3-443;

(d) order the placement of the child with the noncustodial parent, superseding any existing custodial order, and dismiss the proceeding with no further obligation on the part of the department to provide services to the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian from whom the child was removed in the initial proceeding;

(e) grant an order of limited emancipation to a child who is 16 years of age or older, as provided in 41-1-501;

(f) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the child and that is licensed or otherwise authorized by law to receive and provide care of the child; or

(iii) a nonparent relative or other individual who has been evaluated and recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the child;

(g) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(h) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for the proposed care and treatment. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-446.

(4) (a) If the court awards temporary legal custody of an abandoned child other than to the department or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

(i) placement of the abandoned child with the extended family member is in the best interests of the child;

(ii) the extended family member requests that the child be placed with the family member; and

(iii) the extended family member is found by the court to be qualified to receive and care for the child.

(b) If more than one extended family member satisfies the requirements of subsection (4)(a), the court may award custody to the extended family member who can best meet the child's needs.

(c) If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member, the department shall investigate and determine if awarding custody to the family member is in the best interests of the child. The department shall provide the reasons for any denial to the court. If the court accepts the department's custody recommendation, the court shall inform any denied family member of the reasons for the denial to the extent that confidentiality laws allow. The court shall include the reasons for denial in the court order if the family member who is denied temporary legal custody requests it to be included.

(5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If the court finds that reasonable efforts are not necessary pursuant to 41-3-442(1) or subsection (5) of this section, a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.

History: En. 10-1314 by Sec. 10, Ch. 328, L. 1974; R.C.M. 1947, 10-1314; amd. Sec. 7, Ch. 567, L. 1979; amd. Sec. 170, Ch. 575, L. 1981; amd. Sec. 3, Ch. 564, L. 1983; amd. Sec. 6, Ch. 659, L. 1985; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 2, Ch. 696, L. 1991; amd. Sec. 2, Ch. 362, L. 1993; amd. Sec. 15, Ch. 458, L. 1995; amd. Sec. 170, Ch. 546, L. 1995; amd. Sec. 9, Ch. 516, L. 1997; amd. Sec. 2, Ch. 428, L. 1999; amd. Sec. 11, Ch. 566, L. 1999; amd. Sec. 4, Ch. 194, L. 2001; amd. Secs. 10, 18(3), Ch. 281, L. 2001; amd. Sec. 11, Ch. 311, L. 2001; Sec. 41-3-406, MCA 1999; reds. 41-3-438 by Sec. 17(2), Ch. 281, L. 2001; amd. Sec. 12, Ch. 504, L. 2003; amd. Sec. 1, Ch. 178, L. 2005; amd. Sec. 5, Ch. 382, L. 2005; amd. Sec. 1, Ch. 73, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 73 inserted (3)(b) regarding evaluation of the noncustodial parent as a possible caretaker; inserted (3)(c) regarding temporary placement of the child with the noncustodial parent and keeping the proceeding open pending completion of any court-ordered treatment plan; in (3)(f)(iii) at beginning after "a" inserted "nonparent" and after "individual who" inserted "has been evaluated"; and made minor changes in style. Amendment effective October 1, 2007.

41-3-439. Department to give placement priority to extended family member of abandoned child. (1) If the department has received temporary legal custody of an abandoned child pursuant to 41-3-438 or permanent legal custody pursuant to 41-3-607, the department shall give priority to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, in determining the person or persons with whom the abandoned child should be placed if:

(a) placement with the extended family member is in the best interests of the abandoned child;

(b) the extended family member has requested that the abandoned child be placed with the family member; and

(c) the department has determined that the extended family member is qualified to receive and care for the abandoned child.

(2) If more than one extended family member of the abandoned child has requested that the child be placed with the family member and all are qualified to receive and care for the child, the department may determine which extended family member to place the abandoned child with in the same manner as provided for in 41-3-438(4).

(3) This part does not affect the department's ability to assess the appropriateness of placement of the child with a noncustodial parent when abandonment has been found against only one parent.

(4) If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that the child be placed with that family member and the department denies the request, the department shall give that family member a written statement of the reasons for the denial to the extent that confidentiality laws allow.

History: En. Sec. 6, Ch. 194, L. 2001; amd. Sec. 80, Ch. 114, L. 2003; amd. Sec. 2, Ch. 178, L. 2005.

41-3-440. Limitation on placement. Except as provided in 41-3-301(1) and in the absence of a dispute between the parties to the action regarding the appropriate placement, the department shall determine the appropriate placement for a child alleged to be or adjudicated as a youth in need of care. The court shall settle any dispute between the parties to an action regarding the appropriate placement. The child may not be placed in a youth assessment center, youth detention facility, detention center, or other facility intended or used for the confinement of adults or youth accused or convicted of criminal offenses.

History: En. Sec. 30, Ch. 311, L. 2001.

41-3-441 reserved.

41-3-442. Temporary legal custody. (1) If a child is found to be a youth in need of care under 41-3-437, the court may grant temporary legal custody under 41-3-438 if the court determines by a preponderance of the evidence that:

(a) dismissing the petition would create a substantial risk of harm to the child or would be a detriment to the child's physical or psychological well-being; and

(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-423, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.

(2) An order for temporary legal custody may be in effect for no longer than 6 months.

(3) The granting of temporary legal custody to the department allows the department to place a child in care provided by a custodial or noncustodial parent, kinship foster home, youth foster home, youth group home, youth shelter care facility, or institution.

(4) Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody, not to exceed 6 months, upon a showing that:

(i) additional time is necessary for the parent or guardian to successfully complete a treatment plan; or

(ii) continuation of temporary legal custody is necessary because of the child's individual circumstances;

(b) continued temporary placement of the child with the noncustodial parent, superseding any existing custodial order;

(c) termination of the parent-child legal relationship and:

(i) permanent legal custody with the right of adoption;

(ii) permanent placement of the child with the noncustodial parent, superseding any existing custodial order; or

(iii) appointment of a guardian pursuant to 41-3-607;

(d) long-term custody when the child is in a planned permanent living arrangement pursuant to 41-3-445;

(e) appointment of a guardian pursuant to 41-3-444; or

(f) dismissal.

(5) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection (2).

(6) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home and shall specifically find that an extension is in the child's best interests.

(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.

(8) In implementing the policy of this section, the child's health and safety are of paramount concern.

(9) A petition requesting temporary legal custody must be served as provided in 41-3-422.

History: En. Sec. 11, Ch. 281, L. 2001; amd. Sec. 13, Ch. 504, L. 2003; amd. Sec. 2, Ch. 73, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 73 inserted (4)(b) regarding a petition for continued temporary placement with the noncustodial parent; inserted (4)(c)(ii) regarding a petition for termination of the parent-child relationship and permanent placement of the child with the noncustodial parent; and made minor changes in style. Amendment effective October 1, 2007.

41-3-443. Treatment plan — contents — changes. (1) The court may order a treatment plan if:

- (a) the parent or parents admit the allegations of an abuse and neglect petition;
- (b) the parent or parents stipulate to the allegations of abuse or neglect pursuant to 41-3-434; or
- (c) the court has made an adjudication under 41-3-437 that the child is a youth in need of care.

(2) Every treatment plan must contain the following information:

- (a) the identification of the problems or conditions that resulted in the abuse or neglect of a child;
- (b) the treatment goals and objectives for each condition or requirement established in the plan. If the child has been removed from the home, the treatment plan must include but is not limited to the conditions or requirements that must be established for the safe return of the child to the family.
- (c) the projected time necessary to complete each of the treatment objectives;
- (d) the specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the treatment plan; and
- (e) the signature of the parent or parents or guardian, unless the plan is ordered by the court.

(3) A treatment plan may include but is not limited to any of the following remedies, requirements, or conditions:

- (a) the right of entry into the child's home for the purpose of assessing compliance with the terms and conditions of a treatment plan;
- (b) the requirement of either the child or the child's parent or guardian to obtain medical or psychiatric diagnosis and treatment through a physician or psychiatrist licensed in the state of Montana;
- (c) the requirement of either the child or the child's parent or guardian to obtain psychological treatment or counseling;
- (d) the requirement of either the child or the child's parent or guardian to obtain and follow through with alcohol or substance abuse evaluation and counseling, if necessary;
- (e) the requirement that either the child or the child's parent or guardian be restricted from associating with or contacting any individual who may be the subject of a department investigation;
- (f) the requirement that the child be placed in temporary medical or out-of-home care;
- (g) the requirement that the parent, guardian, or other person having physical or legal custody furnish services that the court may designate.

(4) A treatment plan may not be altered, amended, continued, or terminated without the approval of the parent or parents or guardian pursuant to a stipulation and order or order of the court.

(5) A treatment plan must contain a notice provision advising parents:

- (a) of timelines for hearings and determinations required under this chapter;
- (b) that the state is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(c) that if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(d) that completion of a treatment plan does not guarantee the return of a child and that completion of the plan without a change in behavior that caused removal in the first instance may result in termination of parental rights.

History: En. Sec. 15, Ch. 566, L. 1999; amd. Sec. 13, Ch. 281, L. 2001; amd. Sec. 15, Ch. 311, L. 2001; Sec. 41-3-420, MCA 1999; redes. 41-3-443 by Sec. 17(2), Ch. 281, L. 2001; amd. Sec. 6, Ch. 382, L. 2005.

41-3-444. Abuse and neglect proceedings — appointment of guardian — financial subsidies. (1) The court may, upon the petition of the department or guardian ad litem, enter an order appointing a guardian for a child who has been placed in the temporary or permanent custody of the department pursuant to 41-3-438, 41-3-445, or 41-3-607. The guardianship may be subsidized by the department under subsection (9) if the guardianship meets the department's criteria, or the guardianship may be nonsubsidized.

(2) The court may appoint a guardian for a child pursuant to this section if the following facts are found by the court:

(a) the department has given its written consent to the appointment of the guardian, whether the guardianship is to be subsidized or not;

(b) if the guardianship is to be subsidized, the department has given its written consent after the department has considered initiating or continuing financial subsidies pursuant to subsection (9);

(c) the child has been adjudicated a youth in need of care;

(d) the department has made reasonable efforts to reunite the parent and child, further efforts to reunite the parent and child by the department would likely be unproductive, and reunification of the parent and child would be contrary to the best interests of the child;

(e) the child has lived with the potential guardian in a family setting and the potential guardian is committed to providing a long-term relationship with the child;

(f) it is in the best interests of the child to remain or be placed with the potential guardian;

(g) either termination of parental rights to the child is not in the child's best interests or parental rights to the child have been terminated, but adoption is not in the child's best interests; and

(h) if the child concerning whom the petition for guardianship has been filed is an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the child's tribe has received notification from the state of the initiation of the proceedings.

(3) In the case of an abandoned child, the court may give priority to a member of the abandoned child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if placement with the extended family member is in the best interests of the child. If more than one extended family member has requested to be appointed as guardian, the court may determine which extended family member to appoint in the same manner provided for in 41-3-438(4).

(4) The entry of a decree of guardianship pursuant to this section terminates the custody of the department and the involvement of the department with the child and the child's parents except for the department's provision of a financial subsidy, if any, pursuant to subsection (9).

(5) A guardian appointed under this section may exercise the powers and has the duties provided in 72-5-231.

(6) The court may revoke a guardianship ordered pursuant to this section if the court finds, after hearing on a petition for removal of the child's guardian, that continuation of the guardianship is not in the best interests of the child. Notice of hearing on the petition must be provided by the moving party to the child's lawful guardian, the department, any court-appointed guardian ad litem, the child's parent if the rights of the parent have not been terminated, and other persons directly interested in the welfare of the child.

(7) A guardian may petition the court for permission to resign the guardianship. A petition may include a request for appointment of a successor guardian.

(8) After notice and hearing on a petition for removal or permission to resign, the court may appoint a successor guardian or may terminate the guardianship and restore temporary legal custody to the department pursuant to 41-3-438.

(9) The department may provide a financial subsidy to a guardian appointed pursuant to this section if the guardianship meets the department's criteria and if the department determines that a subsidy is in the best interests of the child. The amount of the subsidy must be determined by the department.

(10) This section does not apply to guardians appointed pursuant to Title 72, chapter 5.

History: En. Sec. 4, Ch. 428, L. 1999; amd. Sec. 5, Ch. 194, L. 2001; amd. Sec. 15, Ch. 281, L. 2001; Sec. 41-3-421, MCA 1999; redes. 41-3-444 by Sec. 17(2), Ch. 281, L. 2001.

41-3-445. Permanency hearing. (1) (a) (i) Subject to subsection (1)(b), a permanency hearing must be held by the court or, subject to the approval of the court and absent an objection by a party to the proceeding, by the foster care review committee, as provided in 41-3-115, or the citizen review board, as provided in 41-3-1010:

(A) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); or

(B) no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first.

(ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the child is permanently placed in either an adoptive or a guardianship placement, the court or the court-approved entity holding the permanency hearing shall conduct a hearing and the court shall issue a finding as to whether the department has made reasonable efforts to finalize the permanency plan for the child.

(b) A permanency hearing is not required if the proceeding has been dismissed, the child was not removed from the home, the child has been returned to the child's parent or guardian, or the child has been legally adopted or appointed a legal guardian.

(c) The permanency hearing may be combined with a hearing that is required in other sections of this part or with a review held pursuant to 41-3-115 or 41-3-1010 if held within the applicable time limits. If a permanency hearing is combined with another hearing or a review, the requirements of the court related to the disposition of the other hearing or review must be met in addition to the requirements of this section.

(d) The court-approved entity conducting the permanency hearing may elect to hold joint or separate reviews for groups of siblings, but the court shall issue specific findings for each child.

(2) At least 3 working days prior to the permanency hearing, the department shall submit a report regarding the child to the entity that will be conducting the hearing for review. The report must address the department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan.

(3) At least 3 working days prior to the permanency hearing, the guardian ad litem or an attorney or advocate for a parent or guardian may submit an informational report to the entity that will be conducting the hearing for review.

(4) In a permanency hearing, the court or other entity conducting the hearing shall consult, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child.

(5) (a) The court's order must be issued within 20 days after the permanency hearing if the hearing was conducted by the court. If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member or that a prior grant of temporary custody with that family member be made permanent, the department shall investigate and determine if awarding custody to that family member is in the best interests of the child. The department shall provide the reasons for any denial to the court. If the court accepts the department's custody recommendation, the court shall inform any denied family member of the reasons for the denial

to the extent that confidentiality laws allow. The court shall include the reasons for denial in the court order if the family member who is denied custody requests it to be included.

(b) If an entity other than the court conducts the hearing, the entity shall keep minutes of the hearing and the minutes and written recommendations must be provided to the court within 20 days of the hearing.

(c) If an entity other than the court conducts the hearing and the court concurs with the recommendations, the court may adopt the recommendations as findings with no additional hearing required. In this case, the court shall issue written findings within 10 days of receipt of the written recommendations.

(6) The court shall approve a specific permanency plan for the child and make written findings on:

(a) whether the permanency plan is in the best interests of the child;

(b) whether the department has made reasonable efforts to finalize the plan; and

(c) other necessary steps that the department is required to take to effectuate the terms of the plan.

(7) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the options provided in subsection (8) and that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditures are reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(8) Permanency options include:

(a) reunification of the child with the child's parent or guardian;

(b) permanent placement of the child with the noncustodial parent, superseding any existing custodial order;

(c) adoption;

(d) appointment of a guardian pursuant to 41-3-444; or

(e) long-term custody if the child is in a planned permanent living arrangement and if it is established by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a fit and willing relative;

(ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

(iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

(iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; or

(v) the child meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) there is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate or not to be in the best interests of the child; and

(D) the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

(9) The court may terminate a planned permanent living arrangement upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served.

History: En. Sec. 11, Ch. 516, L. 1997; amd. Sec. 3, Ch. 428, L. 1999; amd. Sec. 12, Ch. 566, L. 1999; amd. Sec. 12, Ch. 281, L. 2001; amd. Sec. 13, Ch. 311, L. 2001; Sec. 41-3-412, MCA 1999; redes. 41-3-445 by Sec. 17(2),

Ch. 281, L. 2001; amd. Sec. 14, Ch. 504, L. 2003; amd. Sec. 56, Ch. 130, L. 2005; amd. Sec. 3, Ch. 178, L. 2005; amd. Sec. 7, Ch. 382, L. 2005; amd. Sec. 3, Ch. 73, L. 2007; amd. Sec. 8, Ch. 166, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 73 inserted (8)(b) regarding permanent placement of the child with the noncustodial parent as a permanency option; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 166 inserted (4) regarding child consultation in a permanency hearing; and made minor changes in style. Amendment effective July 1, 2007.

41-3-446. Contributions by parents or guardians for youth's care. (1) If physical or legal custody of the youth is transferred to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(2) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (1), the court shall order the youth's parent or guardian to pay an amount based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(3) (a) Except as provided in subsection (3)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for a contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and must be included in the order. An exception from the immediate income-withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(4) Upon a showing of a change in the financial ability of the youth's parent or guardian to pay, the court may modify its order for the payment of contributions required under subsection (2).

(5) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

History: En. Sec. 10, Ch. 516, L. 1997; amd. Sec. 12, Ch. 311, L. 2001; Sec. 41-3-411, MCA 1999; reded. 41-3-446 by Sec. 17(2), Ch. 281, L. 2001.

CHAPTER 5 YOUTH COURT ACT

Part 1 General

41-5-101. Short title. This chapter may be cited as the “Montana Youth Court Act”.

History: En. 10-1201 by Sec. 1, Ch. 329, L. 1974; R.C.M. 1947, 10-1201.

41-5-102. Declaration of purpose. The Montana Youth Court Act must be interpreted and construed to effectuate the following express legislative purposes:

(1) to preserve the unity and welfare of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of a youth coming within the provisions of the Montana Youth Court Act;

(2) to prevent and reduce youth delinquency through a system that does not seek retribution but that provides:

(a) immediate, consistent, enforceable, and avoidable consequences of youths’ actions;

(b) a program of supervision, care, rehabilitation, detention, competency development, and community protection for youth before they become adult offenders;

(c) in appropriate cases, restitution as ordered by the youth court; and

(d) that, whenever removal from the home is necessary, the youth is entitled to maintain ethnic, cultural, or religious heritage whenever appropriate;

(3) to achieve the purposes of subsections (1) and (2) in a family environment whenever possible, separating the youth from the parents only when necessary for the welfare of the youth or for the safety and protection of the community;

(4) to provide judicial procedures in which the parties are ensured a fair, accurate hearing and recognition and enforcement of their constitutional and statutory rights.

History: En. 10-1202 by Sec. 2, Ch. 329, L. 1974; R.C.M. 1947, 10-1202; amd. Sec. 1, Ch. 246, L. 1979; amd. Sec. 3, Ch. 528, L. 1995; amd. Sec. 1, Ch. 537, L. 1999; amd. Sec. 1, Ch. 512, L. 2005.

41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) “Adult” means an individual who is 18 years of age or older.

(2) “Agency” means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) “Assessment officer” means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

(4) “Commit” means to transfer legal custody of a youth to the department or to the youth court.

(5) “Correctional facility” means a public or private, physically secure residential facility under contract with the department and operated solely for the purpose of housing adjudicated delinquent youth.

(6) “Cost containment pool” means funds allocated by the department under 41-5-132 for distribution by the cost containment review panel.

(7) “Cost containment review panel” means the panel established in 41-5-131.

(8) “Court”, when used without further qualification, means the youth court of the district court.

(9) “Criminally convicted youth” means a youth who has been convicted in a district court pursuant to 41-5-206.

(10) (a) “Custodian” means a person, other than a parent or guardian, to whom legal custody of the youth has been given.

(b) The term does not include a person who has only physical custody.

(11) “Delinquent youth” means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who has been placed on probation as a delinquent youth and who has violated any condition of probation.

(12) "Department" means the department of corrections provided for in 2-15-2301.

(13) (a) "Department records" means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed under 41-5-1513(1)(b) or who are under parole supervision.

(b) Department records do not include information provided by the department to the department of public health and human services' management information system or information maintained by the youth court through the office of court administrator.

(14) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:

(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case;

(b) contempt of court or violation of a valid court order; or

(c) violation of a youth parole agreement.

(15) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(16) "Emergency placement" means placement of a youth in a youth care facility for less than 45 days to protect the youth when there is no alternative placement available.

(17) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

(18) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1525.

(19) (a) "Formal youth court records" means information or data, either in written or electronic form, on file with the clerk of district court pertaining to a youth under the jurisdiction of the youth court and includes petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, and predispositional studies.

(b) The term does not include information provided by the youth court to the department of public health and human services' management information system.

(20) "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

(21) "Guardian" means an adult:

(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

(22) "Habitual truancy" means recorded absences of 10 days or more of unexcused absences in a semester or absences without prior written approval of a parent or a guardian.

(23) (a) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility.

(b) The term does not include a jail.

(24) (a) "Informal youth court records" means information or data, either in written or electronic form, maintained by youth court probation offices pertaining to a youth under the jurisdiction of the youth court and includes reports of preliminary inquiries, youth assessment materials, medical records, school records, and supervision records of probationers.

(b) The term does not include information provided by the youth court to the department of public health and human services' management information system.

(25) (a) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest.

(b) The term does not include a colocated juvenile detention facility that complies with 28 CFR, part 31.

(26) “Judge”, when used without further qualification, means the judge of the youth court.

(27) “Juvenile home arrest officer” means a court-appointed officer administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

(28) “Law enforcement records” means information or data, either in written or electronic form, maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

(29) (a) “Legal custody” means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

- (i) have physical custody of the youth;
- (ii) determine with whom the youth shall live and for what period;
- (iii) protect, train, and discipline the youth; and
- (iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual’s rights and duties as guardian unless otherwise authorized by the court entering the order.

(30) “Necessary parties” includes the youth and the youth’s parents, guardian, custodian, or spouse.

(31) (a) “Out-of-home placement” means placement of a youth in a program, facility, or home, other than a custodial parent’s home, for purposes other than preadjudicatory detention.

(b) The term does not include shelter care or emergency placement of less than 45 days.

(32) (a) “Parent” means the natural or adoptive parent.

(b) The term does not include:

- (i) a person whose parental rights have been judicially terminated; or
- (ii) the putative father of an illegitimate youth unless the putative father’s paternity is established by an adjudication or by other clear and convincing proof.

(33) “Probable cause hearing” means the hearing provided for in 41-5-332.

(34) “Regional detention facility” means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

(35) “Restitution” means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

(36) “Running away from home” means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

(37) “Secure detention facility” means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(38) “Serious juvenile offender” means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

(39) “Shelter care” means the temporary substitute care of youth in physically unrestricting facilities.

(40) “Shelter care facility” means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-347.

(41) “Short-term detention center” means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

(42) “State youth correctional facility” means the Pine Hills youth correctional facility in Miles City or the Riverside youth correctional facility in Boulder.

(43) “Substitute care” means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to

youth who are removed from or are without the care and supervision of their parents or guardians.

(44) "Victim" means:

(a) a person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a criminal offense if committed by an adult;

(b) an adult relative of the victim, as defined in subsection (44)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

(45) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(46) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1203.

(47) "Youth assessment center" means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior.

(48) "Youth care facility" has the meaning provided in 52-2-602.

(49) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth or a youth in need of intervention and includes the youth court judge, probation officers, and assessment officers.

(50) "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that is:

(a) (i) operated, administered, and staffed separately and independently of a jail; or

(ii) a colocated secure detention facility that complies with 28 CFR, part 31; and

(b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order.

(51) "Youth in need of intervention" means a youth who is adjudicated as a youth and who:

(a) commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

(i) violates any Montana municipal or state law regarding alcoholic beverages; or

(ii) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

(b) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention.

History: Ap.p. Sec. 3, Ch. 329, L. 1974; amd. Sec. 1, Ch. 571, L. 1977; Sec. 10-1203, R.C.M. 1947; Ap.p. Sec. 2, Ch. 427, L. 1971; Sec. 10-1102, R.C.M. 1947; amd. and redes. 10-1243 by Sec. 43, Ch. 329, L. 1974; amd. Sec. 15, Ch. 571, L. 1977; Sec. 10-1243, R.C.M. 1947; R.C.M. 1947, 10-1203, 10-1243; amd. Sec. 2, Ch. 246, L. 1979; amd. Sec. 1, Ch. 233, L. 1983; amd. Sec. 2, Ch. 465, L. 1983; amd. Sec. 6, Ch. 475, L. 1987; amd. Sec. 1, Ch. 515, L. 1987; amd. Sec. 54, Ch. 609, L. 1987; amd. Sec. 1, Ch. 231, L. 1991; amd. Sec. 2, Ch. 547, L. 1991; amd. Sec. 2, Ch. 548, L. 1991; amd. Secs. 1, 29, Ch. 799, L. 1991; amd. Sec. 191, Ch. 546, L. 1995; amd. Sec. 191, Ch. 42, L. 1997; amd. Sec. 2, Ch. 189, L. 1997; amd. Sec. 3, Ch. 286, L. 1997; amd. Sec. 13, Ch. 550, L. 1997; amd. Sec. 1, Ch. 106, L. 1999; amd. Sec. 1, Ch. 326, L. 1999; amd. Sec. 1, Ch. 532, L. 1999; amd. Sec. 54, Ch. 7, L. 2001; amd. Sec. 2, Ch. 114, L. 2001; amd. Sec. 1, Ch. 576, L. 2001; amd. Sec. 1, Ch. 587, L. 2001; amd. Sec. 81, Ch. 114, L. 2003; amd. Sec. 1, Ch. 188, L. 2003; amd. Sec. 1, Ch. 423, L. 2005; amd. Sec. 2, Ch. 398, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 398 substituted cost containment pool for cost containment funds as defined term and substituted "allocated" for "retained"; in definition of department records deleted reference to 41-5-1512(1)(c); and made minor changes in style. Amendment effective June 30, 2007.

41-5-104. Repealed. Sec. 23, Ch. 398, L. 2007.

History: En. Sec. 30, Ch. 227, L. 1943; Sec. 10-631, R.C.M. 1947; redes. 10-1239 by Sec. 39, Ch. 329, L. 1974; R.C.M. 1947, 10-1239; amd. Sec. 1, Ch. 580, L. 1985.

41-5-105. Youth court committee. In every county of the state the judge having jurisdiction may appoint a committee, willing to act without compensation, composed of not less than three or more than seven reputable citizens, including youth representatives. The committee must be designated as a youth court committee. This committee shall meet subject to

the call of the judge to confer with him on all matters pertaining to the youth department of the court, including the appointment of probation officers, and shall act as a supervisory committee of youth detention facilities.

History: En. Sec. 27, Ch. 227, L. 1943; amd. Sec. 1, Ch. 128, L. 1957; amd. Sec. 13, Ch. 262, L. 1969; Sec. 10-628, R.C.M. 1947; amd. and redes. 10-1240 by Sec. 40, Ch. 329, L. 1974; R.C.M. 1947, 10-1240; amd. Sec. 19, Ch. 799, L. 1991.

41-5-106. Order of adjudication — noncriminal. No placement of any youth in any state youth correctional facility under this chapter shall be deemed commitment to a penal institution. No adjudication upon the status of any youth in the jurisdiction of the court shall operate to impose any of the civil disability imposed on a person by reason of conviction of a criminal offense, nor shall such adjudication be deemed a criminal conviction, nor shall any youth be charged with or convicted of any crime in any court except as provided in this chapter. Neither the disposition of a youth under this chapter nor evidence given in youth court proceedings under this chapter shall be admissible in evidence except as otherwise provided in this chapter.

History: En. 10-1235 by Sec. 35, Ch. 329, L. 1974; amd. Sec. 11, Ch. 571, L. 1977; R.C.M. 1947, 10-1235; amd. Sec. 55, Ch. 609, L. 1987.

41-5-107. Administration. The provisions of Title 52, chapter 2, part 6, govern the administration of this chapter.

History: En. Sec. 30, Ch. 465, L. 1983.

41-5-108 and 41-5-109 reserved.

41-5-110. Youth court hearings — priority. All hearings and other court appearances required under Title 41, chapter 5, must be given priority by the court and must be scheduled to be heard as expeditiously as possible.

History: En. Sec. 15, Ch. 515, L. 1987.

41-5-111. Court costs and expenses. (1) Compensation for services and related expenses for counsel assigned for a party must be paid by the office of state public defender provided for in 47-1-201.

(2) Expenses for service of summons, notices, subpoenas, fees, and traveling expenses of witnesses, and other witness-related expenses incurred in any proceeding under the Montana Youth Court Act must be paid as provided for in 26-2-506.

(3) Reasonable compensation of a guardian ad litem appointed by the court must be paid as provided for in 3-5-901.

(4) Costs for transcripts and printing briefs must be paid as provided for in 3-5-604.

History: En. 10-1226 by Sec. 26, Ch. 329, L. 1974; R.C.M. 1947, 10-1226; amd. Sec. 6, Ch. 363, L. 1983; amd. Sec. 1, Ch. 737, L. 1985; amd. Sec. 2, Ch. 11, Sp. L. June 1986; amd. Sec. 6, Ch. 14, Sp. L. June 1986; Sec. 41-5-207, MCA 1995; redes. 41-5-111 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 5, Ch. 583, L. 2003; amd. Sec. 36, Ch. 449, L. 2005.

41-5-112. Parental contributions account — allocation of proceeds. (1) There is a parental contributions account in the state special revenue fund.

(2) Contributions paid by the parents and guardians of youth under this chapter must be deposited in the account.

(3) All money in the account, except any amount required to be returned to federal sources, is allocated to the department to offset the cost of out-of-home placements, programs, and services for youth under the jurisdiction of the youth court or department.

History: En. Sec. 6, Ch. 696, L. 1991; amd. Sec. 196, Ch. 546, L. 1995; amd. Secs. 40, 49(3)(f), Ch. 286, L. 1997; amd. Sec. 15, Ch. 516, L. 1997; Sec. 41-5-530, MCA 1995; redes. 41-5-112 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 3, Ch. 398, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 398 in (2) substituted "this chapter" for "41-3-446, 41-5-1501, or 41-5-1525"; and in (3) after "federal" deleted "or county" and at end substituted "to offset the cost of out-of-home placements, programs, and services for youth under the jurisdiction of the youth court or department" for "of public health and human services to carry out its duties under 52-1-103". Amendment effective June 30, 2007.

41-5-113. Restrictions on use of funds. (1) Funds available to a judicial district under 41-5-130, 41-5-132, or 41-5-2012 may not be used to:

(a) pay salary, benefits, or training costs of a federal, state, or county employee;

(b) purchase items for a federal, state, or county agency that the agency would normally provide for its employees;

(c) support a program or service previously paid for by another source, except as provided in subsection (2); or

(d) construct or remodel a physical structure.

(2) Available funds may be used to support a program providing direct services to youth that was previously funded through grant money if the program's demonstrated outcomes resulted in a reduction in out-of-home placements.

(3) A judicial district shall comply with state procurement laws when expending available funds.

History: En. Sec. 1, Ch. 398, L. 2007.

Compiler's Comments

Effective Date: Section 25, Ch. 398, L. 2007, provided: "[This act] is effective June 30, 2007."

41-5-114 through 41-5-120 reserved.

41-5-121. Youth placement committees — composition. (1) In each judicial district, the youth court and the department shall establish a youth placement committee for the purposes of:

(a) recommending an appropriate placement of a youth committed to the youth court under 41-5-1512 or 41-5-1513 or committed to the department under 41-5-1513; or

(b) recommending available community services or alternative placements whenever a change is required in the placement of a youth who is currently in the legal custody of the youth court under 41-5-1512 or 41-5-1513 or the department under 41-5-1513. However, the committee may not substitute its judgment for that of the superintendent of a state youth correctional facility regarding the discharge of a youth from the facility or the placement of a youth on parole under the department's jurisdiction.

(2) (a) The committee consists of not less than five members and must include persons who are knowledgeable about the youth, treatment and placement options, and other resources appropriate to address the needs of the youth.

(b) The committee must include:

(i) a juvenile parole officer employed by the department;

(ii) a representative of the department of public health and human services;

(iii) the chief juvenile probation officer or the chief juvenile probation officer's designee. The officer or the officer's designee is the presiding officer of the committee.

(iv) a mental health professional; and

(v) if an Indian youth is involved, a person, preferably an Indian, knowledgeable about Indian culture and Indian family matters.

(c) The committee may include:

(i) a representative of a school district located within the boundaries of the judicial district who has knowledge of and experience with youth;

(ii) the youth's parent or guardian;

(iii) a youth services provider; and

(iv) the youth's juvenile probation officer.

(3) The youth court judge shall appoint all members of the youth placement committee except the juvenile parole officer. The director of the department shall appoint the juvenile parole officer and shall, when making the appointment, take into consideration:

(a) the juvenile parole officer's qualifications;

(b) the costs involved in the juvenile parole officer's attendance at youth placement committee meetings; and

(c) the location of the juvenile parole officer's home in relation to the location of the youth placement committee.

(4) Committee members serve without compensation.

(5) The committee may be convened by request of the department to the presiding officer or by the chief juvenile probation officer.

(6) If a representative of the school district within the boundaries of which the youth is recommended to be placed and will be attending school is not included on the committee, the

person who convened the committee shall inform the school district of the final placement decision for the youth.

(7) The department may not charge expenditures to the judicial district allocations established pursuant to 41-5-130 unless the youth court and the department have established a youth placement committee as provided in this section.

History: En. Sec. 15, Ch. 609, L. 1987; amd. Sec. 2, Ch. 67, L. 1989; amd. Sec. 1, Ch. 403, L. 1995; amd. Sec. 38, Ch. 286, L. 1997; amd. Sec. 43, Ch. 550, L. 1997; Sec. 41-5-525, MCA 1995; redes. 41-5-121 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 2, Ch. 532, L. 1999; amd. Sec. 2, Ch. 587, L. 2001; amd. Sec. 1, Ch. 266, L. 2003; amd. Sec. 4, Ch. 398, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 398 in (1)(a) near middle after "youth" substituted "committed" for "referred", after "court" inserted "under 41-5-1512 or 41-5-1513", after "or" inserted "committed to", and after "under" deleted "41-5-1512 and"; in (1)(b) in first sentence before "custody" inserted "legal", after "of the" substituted "youth court" for "department", and at end inserted "or the department under 41-5-1513" and in second sentence at end inserted "or the placement of a youth on parole under the department's jurisdiction"; in (2)(b)(iii) in first sentence in two places before "probation" inserted "juvenile" and at beginning of second sentence inserted "The officer or the officer's designee"; in (2)(c)(iv) before "probation" inserted "juvenile"; in (5) at beginning deleted "Notwithstanding the provisions of 41-5-123", after "convened by" inserted "request of", after "department" inserted "to the presiding officer", before "probation" inserted "chief juvenile", and at end deleted "of the youth court"; in (7) near middle substituted "charge expenditures to the judicial district allocations" for "disburse funds from the budget allocation accounts"; and made minor changes in style. Amendment effective June 30, 2007.

41-5-122. Duties of youth placement committee. A youth placement committee shall:

- (1) review all information relevant to the placement of a youth;
- (2) consider available resources appropriate to meet the needs of the youth;
- (3) consider the treatment recommendations of any professional person who has evaluated the youth;
- (4) consider options for the financial support of the youth;
- (5) recommend in writing to the youth court judge or the department an appropriate placement for the youth, considering the age and treatment needs of the youth and the relative costs of care in facilities considered appropriate for placement. A committee shall consider placement in a licensed facility, at a state youth correctional facility, or with a parent, other family member, or guardian.
- (6) review temporary and emergency placements as required under 41-5-124; and
- (7) conduct placement reviews at least every 6 months and at other times as requested by the youth court.

History: En. Sec. 16, Ch. 609, L. 1987; amd. Sec. 1, Ch. 399, L. 1989; amd. Sec. 2, Ch. 403, L. 1995; Sec. 41-5-526, MCA 1995; redes. 41-5-122 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 3, Ch. 587, L. 2001.

41-5-123. Repealed. Sec. 23, Ch. 398, L. 2007.

History: En. Sec. 17, Ch. 609, L. 1987; amd. Sec. 2, Ch. 399, L. 1989; amd. Sec. 3, Ch. 403, L. 1995; amd. Sec. 39, Ch. 286, L. 1997; Sec. 41-5-527, MCA 1995; redes. 41-5-123 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 4, Ch. 587, L. 2001.

41-5-124. Temporary and emergency placements — limit. A temporary placement of a youth in a shelter care facility for less than 45 days or an emergency placement of a youth in a youth care facility is exempt from review by the appropriate youth placement committee. If a temporary or emergency placement of a youth continues for 45 or more days, the youth court shall refer the placement of the youth to the appropriate youth placement committee for review. The committee shall make a recommendation for placement to the youth court.

History: En. Sec. 18, Ch. 609, L. 1987; Sec. 41-5-528, MCA 1995; redes. 41-5-124 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 5, Ch. 587, L. 2001; amd. Sec. 5, Ch. 398, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 398 in first sentence near middle after "facility" inserted "for less than 45 days" and at end substituted "review by the appropriate youth placement committee" for "the requirements of 41-5-123", in second sentence near middle after "days, the" substituted "youth court" for "department", and in third sentence at end deleted "in accordance with 41-5-123"; and made minor changes in style. Amendment effective June 30, 2007.

41-5-125. Confidentiality of youth placement committee meetings and records. (1) Meetings of a youth placement committee are closed to the public to protect a youth's right to individual privacy.

(2) Information presented to the committee about a youth and committee records are confidential and subject to confidentiality requirements established by rule by the department.

History: En. Sec. 19, Ch. 609, L. 1987; Sec. 41-5-529, MCA 1995; redes. 41-5-125 by Sec. 47, Ch. 286, L. 1997. 41-5-126 through 41-5-129 reserved.

41-5-130. Department to administer juvenile placement funds — transfer of funds — allocations. (1) The department shall administer juvenile placement funds as appropriated by the legislature in accordance with this chapter. The department shall consult with the office of court administrator when developing its budget request for juvenile placement funds for submission to the budget director as provided in 17-7-112.

(2) For each fiscal year, the department shall transfer \$25,000 from the appropriated juvenile placement funds to the office of court administrator for evaluations of out-of-home placements, programs, and services as provided in 41-5-2003. The office shall deposit the funds in the youth court intervention and prevention account provided for in 41-5-2011.

(3) For each fiscal year, the department shall, after transferring funds under subsection (2) and allocating funds to the cost containment pool under 41-5-132, allocate 11% of the remaining appropriated juvenile placement funds for juvenile parole out-of-home placements, programs, and services.

(4) For each fiscal year, the department shall, after allocating funds under subsection (3), allocate the remaining appropriated juvenile placement funds to each judicial district according to a formula established by the cost containment review panel provided for in 41-5-131.

(5) A judicial district may expend funds from its annual allocation for out-of-home placements or for other programs or services intended to reduce or prevent juvenile delinquency subject to the provisions of subsection (6).

(6) (a) Except as provided in subsection (6)(b), a judicial district shall reserve at least 80% of its annual allocation for out-of-home placements and the remainder for programs or services.

(b) A judicial district may reserve up to 50% of its annual allocation for programs or services if:

(i) the programs or services have, based on demonstrated outcomes, reduced the number of placements in correctional facilities or higher-cost residential placements; and

(ii) the judicial district would not require funding from the cost containment pool, provided for in 41-5-132, in the same fiscal year in which the annual allocation is made under this subsection (6)(b).

(7) A judicial district that intends to expend funds from its annual allocation on an out-of-home placement, program, or service for a person who is 18 years of age or older shall submit to the cost containment review panel a plan describing how the funds will be used. The cost containment review panel shall approve or disapprove the plan. If the plan is approved, the judicial district may expend funds from its annual allocation to implement the plan.

(8) At the end of each fiscal year, after all valid obligations have been paid or encumbered for payment, the department shall transfer any unexpended funds from the judicial districts' annual allocations provided for in this section to the office of court administrator for deposit into the youth court intervention and prevention account provided for in 41-5-2011.

History: En. Sec. 11, Ch. 587, L. 2001; amd. Sec. 3, Ch. 482, L. 2005; amd. Sec. 6, Ch. 398, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 398 substituted (1) concerning department administration of juvenile placement funds for former text that read: "Each judicial district may elect to participate in the juvenile delinquency intervention program"; inserted (2) concerning annual fund transfer; inserted (3) concerning allocation of funds; inserted (4) concerning allocation of remaining funds; in (5) at beginning substituted "judicial district" for "jurisdiction that elects to participate in the program", after "funds from" substituted "its annual allocation" for "a juvenile placement fund", after "other" inserted "programs", and at end substituted "the provisions of subsection (6)" for "restrictions in this chapter and administrative rules adopted by the department"; deleted former (3) through (6) that read: "(3) A jurisdiction that does not elect to participate in the program may commit youth to the department for out-of-home placements pursuant to this chapter.

(4) A jurisdiction that has not previously participated in the program may elect to participate in the program prior to the start of a new biennium. Participation must be for a complete biennium. A jurisdiction may elect to discontinue participation in future bienniums upon 3 months' written notice to the department prior to the beginning of the next biennium.

(5) A youth court that does not participate in the program may not expend any juvenile placement funds for placements or services unless approved by the department pursuant to 41-5-123.

(6) The department shall establish an account for each judicial district in order to administer a juvenile placement fund as appropriated by the legislature. The accounts must be used by the youth courts for funding out-of-home placements and for other services intended to reduce or prevent juvenile delinquency subject to

restrictions in this chapter and administrative rules adopted by the department. At the end of a fiscal year, the balance in the accounts established under this subsection must be transferred to the youth intervention and prevention account established in 41-5-2011"; inserted (6) concerning reservation of annual allocation; inserted (7) concerning plan describing use of funds; inserted (8) concerning transfer of unexpended funds; and made minor changes in style. Amendment effective June 30, 2007.

41-5-131. Cost containment review panel — duties. (1) The department shall establish a cost containment review panel.

(2) (a) The members of the cost containment review panel must be appointed as follows:

- (i) three members appointed by the director of the department of corrections;
- (ii) three members appointed by the chief justice of the supreme court; and
- (iii) one member who is a professional working in the field of children's mental health appointed by the director of the department of public health and human services.

(b) Each appointing authority under subsection (2)(a) shall appoint one person to serve as the alternate for a member appointed by the authority who is unable to participate in a cost containment review panel meeting.

(3) Decisions of the cost containment review panel must be made by majority vote of the members of the cost containment review panel or their alternates.

(4) The cost containment review panel shall:

(a) establish the formula for the annual allocation to each judicial district as provided in 41-5-130;

(b) approve or disapprove plans for out-of-home placements, programs, or services for persons 18 years of age or older as provided in 41-5-130;

(c) recommend an amount to be allocated to the cost containment pool as provided in 41-5-132;

(d) approve requests by judicial districts for allocations from the cost containment pool as provided in 41-5-132;

(e) approve requests by the department for reimbursement from the cost containment pool as provided in 41-5-132;

(f) provide recommendations on the evaluation of out-of-home placements, programs, and services as provided in 41-5-2003;

(g) review plans submitted under 41-5-2012 and recommend to the office of court administrator whether each plan should be approved; and

(h) adopt procedures for the operation of the cost containment review panel.

History: En. Sec. 17, Ch. 587, L. 2001; amd. Sec. 7, Ch. 398, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 398 substituted (2)(a) concerning appointment for former text that read: "The cost containment review panel shall consist of the following members appointed by the department"; in (2)(a)(i) at beginning substituted "three" for "two" and substituted "appointed by the director of the department" for "from the department"; inserted (2)(a)(ii) concerning appointment by chief justice; in (2)(a)(iii) after "member" substituted "who is a professional working in the field of children's mental health appointed by the director of the department" for "from the department"; deleted former (2)(c) through (2)(g) that read: "(c) a representative from the field of mental health;

(d) a youth court judge;

(e) two chief juvenile probation officers;

(f) a county commissioner; and

(g) a representative of the youth justice council"; inserted (2)(b) concerning alternate members; in (3) at end inserted "of the members of the cost containment review panel or their alternates"; substituted (4) concerning cost containment review panel functions regarding allocation of funds for former (4) and (5) that read: "(4) The cost containment review panel shall determine the distribution of funds allocated in 41-5-132.

(5) The cost containment review panel may evaluate the effectiveness of new or innovative programs for the treatment of troubled youth and make recommendations to the youth courts and the department"; deleted former (6) that read: "(6) A youth court shall request funds from the cost containment review panel prior to exceeding its account allocation under 41-5-130. If a panel member referred to in subsections (2)(d) through (2)(g) is a resident of or is employed in the judicial district of a youth court requesting cost containment funds, the panel member may not serve as a panel member for purposes of a decision regarding disbursement of cost containment funds to the youth court and an alternate panel member must be appointed by the department for purposes of the decision"; and made minor changes in style. Amendment effective June 30, 2007.

41-5-132. Cost containment pool — allocation of appropriated funds — authorization of allocation from pool — transfer of unexpended funds. (1) (a) The department shall establish a cost containment pool. After considering the cost containment

review panel's recommendation as provided for in subsection (1)(b), the department shall allocate to the cost containment pool at the beginning of each fiscal year not less than \$1 million from the funds appropriated for juvenile placements.

(b) The cost containment review panel shall submit to the department a recommended amount to be allocated to the cost containment pool at least 1 month prior to the start of each fiscal year. The cost containment review panel shall establish a methodology for determining the recommended amount to be allocated to the cost containment pool.

(2) According to criteria and procedures adopted by the cost containment review panel, the cost containment review panel may authorize an allocation from the cost containment pool to a judicial district that has exceeded its annual allocation under 41-5-130 for juvenile out-of-home placements, programs, and services. The judicial district shall request an allocation from the cost containment review panel before exceeding its annual allocation.

(3) (a) According to criteria and procedures established by the cost containment review panel, the cost containment review panel may authorize an allocation from the cost containment pool to the department for a request submitted under subsection (3)(b).

(b) The department may request at the end of the fiscal year that the cost containment review panel reimburse the department from the cost containment pool for costs incurred under 41-5-1504(3) for placing a youth found to be suffering from a mental disorder, including costs for transporting the youth. Before requesting reimbursement, the department shall expend its state youth correctional facility budgets for mental health placements and any parental contributions or federal funds, for which the department has spending authority, or private insurance payments received for treatment.

(4) In addition to any disbursement made by the cost containment review panel under subsection (2) or (3), the department may expend funds from the cost containment pool to reimburse cost containment review panel members or alternates for travel expenses, as provided in 2-18-501 through 2-18-503, and to pay the actual costs incurred in conducting a cost containment review panel meeting, excluding salary and benefits for employees providing support services to the cost containment review panel.

(5) The department shall transfer any amount remaining in the cost containment pool at the end of each fiscal year to the office of court administrator for deposit in the youth court intervention and prevention account provided for in 41-5-2011.

History: En. Sec. 20, Ch. 587, L. 2001; amd. Sec. 8, Ch. 398, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 398 in (1)(a) in first sentence after "department" deleted "of corrections" and at end substituted "pool" for "fund for the purposes of 41-5-131" and at beginning of second sentence inserted language concerning review panel's recommendation, after "allocate to the" substituted "cost containment pool" for "fund", and at end deleted "budget for the fiscal biennium beginning July 1, 2001, to be used for the purposes of 41-5-131"; in (1)(b) deleted former first sentence that read: "The department shall determine the amount of the cost containment fund at the beginning of each fiscal year", in first sentence after "submit" inserted "to the department" and substituted "pool" for "fund", and inserted second sentence concerning establishing methodology for recommended amount; inserted (2) concerning allocation from pool to judicial district; inserted (3) concerning allocation from pool to department; inserted (4) concerning reimbursement of panel members; inserted (5) concerning transfer of remaining funds to youth court intervention and prevention account; and made minor changes in style. Amendment effective June 30, 2007.

Part 2

Youth Court — Jurisdiction — Records

41-5-201. Youth court judge — judges pro tempore — special masters. (1) Each judicial district in the state must have at least one judge of the youth court whose duties are to:

(a) appoint and supervise qualified personnel to staff the youth division probation departments within the judicial district;

(b) conduct hearings on youth court proceedings under this chapter;

(c) perform any other functions consistent with the legislative purpose of this chapter.

(2) In each multijudge judicial district the judges shall, by court rule, designate one or more of their number to act as youth court judge in each county in the judicial district for a fixed period of time. Service as youth court judge may be rotated among the different judges of the judicial district and among the individual counties within the judicial district for given periods of time. Continuity of service of a given judge as youth court judge and continuity in the operation and

policies of the youth court in the county having the largest population in the judicial district must be the principal consideration of the rule.

(3) (a) A youth court judge may appoint a judge pro tempore or a special master to conduct preliminary, nondispositive matters, including but not limited to hearings for probable cause or detention and taking of responses for petitions.

(b) A judge pro tempore or special master must be a member of the state bar of Montana.

History: En. 10-1233 by Sec. 33, Ch. 329, L. 1974; R.C.M. 1947, 10-1233(part); amd. Sec. 1, Ch. 60, L. 1985; amd. Sec. 14, Ch. 550, L. 1997.

41-5-202. Renumbered 41-5-1405. Sec. 47, Ch. 286, L. 1997.

41-5-203. Jurisdiction of court. (1) Except as provided in subsection (2) and for cases filed in the district court under 41-5-206, the court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth or a youth in need of intervention or concerning any person under 21 years of age charged with having violated any law of the state or any ordinance of a city or town other than a traffic or fish and game law prior to having become 18 years of age.

(2) Justices', municipal, and city courts have concurrent jurisdiction with the youth court over all alcoholic beverage, tobacco products, and gambling violations alleged to have been committed by a youth.

(3) The court has jurisdiction to:

(a) transfer a youth court case to the district court after notice and hearing;

(b) with respect to extended jurisdiction juvenile cases:

(i) designate a proceeding as an extended jurisdiction juvenile prosecution;

(ii) conduct a hearing, receive admissions, and impose upon a youth who is adjudicated as an extended jurisdiction juvenile a sentence that may extend beyond the youth's age of majority;

(iii) stay that portion of an extended jurisdiction sentence that is extended beyond a youth's majority, subject to the performance of the juvenile portion of the sentence;

(iv) continue, modify, or revoke the stay after notice and hearing;

(v) after revocation, transfer execution of the stayed sentence to the department;

(vi) transfer supervision of any juvenile sentence if, after notice and hearing, the court determines by a preponderance of the evidence that the juvenile has violated or failed to perform the juvenile portion of an extended jurisdiction sentence; and

(vii) transfer a juvenile case to district court after notice and hearing; and

(c) impose criminal sanctions on a juvenile as authorized by the Extended Jurisdiction Prosecution Act, Title 41, chapter 5, part 16.

History: En. 10-1206 by Sec. 6, Ch. 329, L. 1974; amd. Sec. 3, Ch. 100, L. 1977; amd. Sec. 1, Ch. 446, L. 1977; R.C.M. 1947, 10-1206; amd. Sec. 1, Ch. 427, L. 1979; amd. Sec. 22, Ch. 626, L. 1993; amd. Sec. 2, Ch. 376, L. 1995; amd. Sec. 1, Ch. 498, L. 1997; amd. Secs. 15, 76, Ch. 550, L. 1997; amd. Sec. 3, Ch. 114, L. 2001; amd. Sec. 2, Ch. 576, L. 2001.

41-5-204. Venue and transfer. (1) The county where a youth is a resident or is alleged to have violated the law has initial jurisdiction over any youth alleged to be a delinquent youth. Except as provided in 41-5-206, the youth court shall assume the initial handling of the case.

(2) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a youth in need of intervention. The youth court of that county shall assume the initial handling of the case. Transfers of venue may be made to any of the following counties in the state:

(a) the county in which the youth is apprehended or found;

(b) the county in which the youth is alleged to have violated the law; or

(c) the county of residence of the youth's parents or guardian.

(3) In the case of a youth alleged to be a youth in need of intervention, a change of venue may be ordered at any time by the concurrence of the youth court judges of both counties in order to ensure a fair, impartial, and speedy hearing and final disposition of the case.

(4) In the case of a youth 16 years of age or older who is accused of one of the serious offenses listed in 41-5-206 and who is to be tried in district court, the charge must be filed and trial held in the district court of the county where the offense occurred.

History: En. 10-1207 by Sec. 7, Ch. 329, L. 1974; R.C.M. 1947, 10-1207; amd. Sec. 2, Ch. 60, L. 1985; amd. Sec. 16, Ch. 550, L. 1997; amd. Sec. 4, Ch. 114, L. 2001.

41-5-205. Retention of jurisdiction — termination. (1) The court may dismiss a petition or otherwise terminate jurisdiction on its own motion or on the motion or petition of any interested party at any time. Unless terminated by the court and except as provided in subsections (2) and (3), the jurisdiction of the court continues until the individual becomes 21 years of age.

(2) Court jurisdiction terminates when:

(a) the proceedings are transferred to district court under 41-5-208 or an information is filed concerning the offense in district court pursuant to 41-5-206;

(b) the youth is discharged by the department; or

(c) execution of a sentence is ordered under 41-5-1605(2)(b)(iii) and the supervisory responsibilities are transferred to the district court under 41-5-1605.

(3) The jurisdiction of the court over an extended jurisdiction juvenile, with respect to the offense for which the youth was convicted as an extended jurisdiction juvenile, extends until the offender becomes 25 years of age unless the court terminates jurisdiction before that date.

(4) The jurisdiction of the court is not terminated if the department issues a release from supervision due to the expiration of a commitment pursuant to 41-5-1522.

History: En. 10-1208 by Sec. 8, Ch. 329, L. 1974; R.C.M. 1947, 10-1208; amd. Sec. 56, Ch. 609, L. 1987; amd. Sec. 2, Ch. 498, L. 1997; amd. Sec. 6, Ch. 587, L. 2001.

41-5-206. Filing in district court prior to formal proceedings in youth court. (1) The county attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103;

(iv) assault on a peace officer or judicial officer as defined in 45-5-210; or

(v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) negligent homicide as defined in 45-5-104;

(ii) arson as defined in 45-6-103;

(iii) aggravated assault as defined in 45-5-202;

(iv) sexual assault as provided in 45-5-502(3);

(v) assault with a weapon as defined in 45-5-213;

(vi) robbery as defined in 45-5-401;

(vii) burglary or aggravated burglary as defined in 45-6-204;

(viii) aggravated kidnapping as defined in 45-5-303;

(ix) possession of explosives as defined in 45-8-335;

(x) criminal distribution of dangerous drugs as defined in 45-9-101;

(xi) criminal possession of dangerous drugs as defined in 45-9-102(4) through (6);

(xii) criminal possession with intent to distribute as defined in 45-9-103(1);

(xiii) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

(xiv) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership as defined in 45-8-403;

(xv) escape as defined in 45-7-306;

(xvi) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through (1)(b)(xv).

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the

youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court unless the district court finds, by a preponderance of the evidence, that:

(a) a youth court proceeding and disposition will serve the interests of community protection;

(b) the nature of the offense does not warrant prosecution in district court; and

(c) it would be in the best interests of the youth if the matter was prosecuted in youth court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

(6) If a youth is found guilty in district court of an offense enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) If a youth's case is filed in the district court and remains in the district court after the transfer hearing, the youth may be detained in a jail or other adult detention facility pending final disposition of the youth's case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal offenses.

History: En. 10-1229 by Sec. 29, Ch. 329, L. 1974; amd. Sec. 9, Ch. 100, L. 1977; R.C.M. 1947, 10-1229; amd. Sec. 1, Ch. 484, L. 1981; amd. Sec. 3, Ch. 60, L. 1985; amd. Sec. 100, Ch. 370, L. 1987; amd. Sec. 3, Ch. 515, L. 1987; amd. Sec. 57, Ch. 609, L. 1987; amd. Sec. 4, Ch. 434, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 6, Ch. 547, L. 1991; amd. Sec. 2, Ch. 448, L. 1993; amd. Sec. 7, Ch. 438, L. 1995; amd. Sec. 192, Ch. 546, L. 1995; amd. Sec. 9, Ch. 285, L. 1997; amd. Sec. 18, Ch. 550, L. 1997; amd. Sec. 2, Ch. 432, L. 1999; amd. Sec. 1, Ch. 523, L. 1999; amd. Sec. 3, Ch. 532, L. 1999; amd. Sec. 2, Ch. 537, L. 1999; amd. Sec. 55, Ch. 7, L. 2001; amd. Sec. 1, Ch. 243, L. 2001; amd. Sec. 3, Ch. 576, L. 2001; amd. Sec. 1, Ch. 277, L. 2005; amd. Sec. 1, Ch. 483, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 483 inserted (1)(b)(iv) including the crime of sexual assault; and made minor changes in style. Amendment effective May 11, 2007.

41-5-207. Renumbered 41-5-111. Sec. 47, Ch. 286, L. 1997.

41-5-208. Transfer of supervisory responsibility to district court after juvenile disposition — nonextended jurisdiction and nontransferred cases. (1) After adjudication by the court of a case that was not transferred to district court under 41-5-206 and that was not prosecuted as an extended jurisdiction juvenile prosecution under part 16 of this chapter, the court may, on the youth's motion or the motion of the county attorney, transfer jurisdiction to the district court and order the transfer of supervisory responsibility from juvenile probation services to adult probation services. A transfer under this section may be made to ensure continued compliance with the court's disposition under 41-5-1512 or 41-5-1513 and may be made at any time after a youth reaches 18 years of age but before the youth reaches 21 years of age.

(2) Before transfer, the court shall hold a hearing on whether the transfer should be made. The hearing must be held in conformity with the rules on a hearing on a petition alleging

delinquency, except that the hearing must be conducted by the court without a jury. The court shall give the youth, the youth's counsel, and the youth's parents, guardian, or custodian notice in writing of the time, place, and purpose of the hearing at least 10 days before the hearing. At the hearing, the youth is entitled to receive:

- (a) written notice of the motion to transfer;
- (b) an opportunity to be heard in person and to present witnesses and evidence;
- (c) a written statement by the court of the evidence relied on and reasons for the transfer;
- (d) the right to cross-examine witnesses, unless the court finds good cause for not allowing confrontation; and
- (e) the right to counsel.

(3) After the hearing, if the court finds by a preponderance of the evidence that transfer of continuing supervisory responsibility to the district court is appropriate, the court shall order the transfer.

(4) If a youth whose case has been transferred to district court under this section violates a disposition previously imposed under 41-5-1512 or 41-5-1513, the district court may, after hearing, impose conditions as provided under 46-18-201 through 46-18-203.

(5) If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the district court may order that the youth, after reaching 18 years of age:

- (a) be incarcerated in a state adult correctional facility, boot camp, or prerelease center; or
- (b) be supervised by the department.

(6) The district court's jurisdiction over a case transferred under this section terminates when the youth reaches 25 years of age.

History: En. Sec. 6, Ch. 438, L. 1995; amd. Sec. 4, Ch. 286, L. 1997; amd. Sec. 4, Ch. 498, L. 1997; amd. Sec. 19, Ch. 550, L. 1997; amd. Sec. 3, Ch. 537, L. 1999.

41-5-209 through 41-5-214 reserved.

41-5-215. Youth court and department records — notification of school. (1) Formal youth court records, including reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, and orders and decrees on file with the clerk of court are public records and are open to public inspection until the records are sealed under 41-5-216.

(2) Social, medical, and psychological records, youth assessment materials, predispositional studies, and supervision records of probationers are open only to the following:

- (a) the youth court and its professional staff;
- (b) representatives of any agency providing supervision and having legal custody of a youth;
- (c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;
- (d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon the party;
- (e) the county attorney;
- (f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;
- (g) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in this subsection (2);
- (h) members of a local interagency staffing group provided for in 52-2-203;
- (i) persons allowed access to the reports referred to under 45-5-624(7); and
- (j) persons allowed access under 42-3-203.

(3) (a) Notwithstanding the requirements of 20-5-321(1)(d) or (1)(e) and subject to the provisions of subsection (3)(b) of this section, the youth court shall notify the school district that the youth presently attends or the school district that the youth has applied to attend of a youth's suspected drug use or criminal activity if after an investigation has been completed:

(i) the youth has admitted the allegation or a petition has been filed with the youth court; and

(ii) a juvenile probation officer has reason to believe that a youth is currently involved with drug use or other criminal activity that has a bearing on the safety of children.

(b) Notification under subsection (3)(a) may not be given for status offenses.

(c) A school district may not refuse to accept the student if refusal violates the federal Individuals With Disabilities Education Act or the federal Americans With Disabilities Act of 1990.

(d) The administrative officials of the school district may enforce school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.

(4) In all cases, a victim is entitled to all information concerning the identity and disposition of the youth, as provided in 41-5-1416.

(5) The school district may disclose, without consent, personally identifiable information from an education record of a pupil to the youth court and law enforcement authorities pertaining to violations of the Montana Youth Court Act or criminal laws by the pupil. The youth court or law enforcement authorities receiving the information shall certify in writing to the school district that the information will not be disclosed to any other party except as provided under state law without the prior consent of the parent or guardian of the pupil.

(6) Any part of records information secured from records listed in subsection (2), when presented to and used by the court in a proceeding under this chapter, must also be made available to the counsel for the parties to the proceedings.

History: En. 10-1231 by Sec. 31, Ch. 329, L. 1974; R.C.M. 1947, 10-1231; amd. Sec. 1, Ch. 507, L. 1979; amd. Sec. 13, Ch. 515, L. 1987; amd. Sec. 64, Ch. 609, L. 1987; amd. Sec. 4, Ch. 510, L. 1991; amd. Sec. 7, Ch. 655, L. 1991; amd. Sec. 4, Ch. 466, L. 1995; amd. Sec. 4, Ch. 481, L. 1995; amd. Sec. 1, Ch. 450, L. 1997; amd. Sec. 167, Ch. 480, L. 1997; amd. Sec. 46, Ch. 550, L. 1997; Sec. 41-5-603, MCA 1995; redes. 41-5-215 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 2, Ch. 106, L. 1999; amd. Sec. 1, Ch. 564, L. 1999; amd. Sec. 82, Ch. 114, L. 2003; amd. Sec. 2, Ch. 423, L. 2005.

41-5-216. Disposition of youth court, law enforcement, and department records.

(1) Formal youth court records, law enforcement records, and department records that are not exempt from sealing under subsections (4) and (6) and that pertain to a youth covered by this chapter must be physically sealed on the youth's 18th birthday. In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of the extended jurisdiction.

(2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

(3) Except as provided in subsection (6), this section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(4) The requirements for sealed records in this section do not apply to medical records, fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, records referred to in 42-3-203, reports referred to in 45-5-624(7), or the information referred to in 46-23-508, in any instance in which the youth was required to register as a sexual offender pursuant to Title 46, chapter 23, part 5.

(5) After formal youth court records, law enforcement records, and department records are sealed, they are not open to inspection except, upon order of the youth court, for good cause, including when a youth commits a new offense, to:

(a) those persons and agencies listed in 41-5-215(2); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

(6) (a) When formal youth court records, law enforcement records, and department records are sealed under subsection (1), the electronic records of the management information system maintained by the department of public health and human services and by the department relating to the youth whose records are being sealed must be preserved for the express purpose of research and program evaluation as provided in subsection (6)(b).

(b) The department of public health and human services and the department shall disassociate the offense and disposition information from the name of the youth in the respective

management information system. The offense and disposition information must be maintained separately and may be used only:

(i) for research and program evaluation authorized by the department of public health and human services or by the department and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(7) (a) Informal youth court records for a youth for whom formal proceedings have been filed must be physically sealed on the youth's 18th birthday or, in those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, upon termination of the extended jurisdiction and may be inspected only pursuant to subsection (5).

(b) The informal youth court records may be maintained and inspected only by youth court personnel upon a new offense prior to the youth's 18th birthday.

(c) Except as provided in subsection (7)(a), when a youth becomes 18 years of age or when extended supervision ends and the youth was involved only in informal proceedings, informal youth court records that are in hard-copy form must be destroyed and any electronic records in the youth court management information system must disassociate the offense and disposition information from the name of the youth and may be used only for the following purposes:

(i) for research and program evaluation authorized by the office of the court administrator and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(8) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth court records within the juvenile probation management information system. Electronic records of the youth court may not be shared except as provided in 41-5-1524. If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the juvenile probation officer shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section.

(9) This section does not prohibit the intra-agency use or information sharing of formal or informal youth court records within the department's youth management information system. Electronic records of the department's youth management information system may not be shared except as provided in subsection (5). If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the department shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section.

(10) This section does not prohibit the sharing of formal or informal youth court records with a short-term detention center, a youth care facility, a youth assessment center, or a youth detention facility upon placement of a youth within the facility.

History: En. 10-1232 by Sec. 32, Ch. 329, L. 1974; amd. Sec. 1, Ch. 59, L. 1975; R.C.M. 1947, 10-1232; amd. Sec. 2, Ch. 507, L. 1979; amd. Sec. 4, Ch. 469, L. 1981; amd. Sec. 14, Ch. 515, L. 1987; amd. Sec. 8, Ch. 251, L. 1995; amd. Sec. 10, Ch. 466, L. 1995; amd. Sec. 5, Ch. 481, L. 1995; amd. Sec. 9, Ch. 528, L. 1995; amd. Sec. 168, Ch. 480, L. 1997; Sec. 41-5-604, MCA 1995; redes. 41-5-216 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 3, Ch. 106, L. 1999; amd. Sec. 83, Ch. 114, L. 2003; amd. Sec. 3, Ch. 423, L. 2005; amd. Sec. 1, Ch. 139, L. 2007; amd. Sec. 2, Ch. 483, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 139 inserted (10) providing that sharing of youth court records with certain facilities is not prohibited upon placement of youth in facility; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 483 in (4) at end after "45-5-624(7)" inserted "or the information referred to in 46-23-508, in any instance in which the youth was required to register as a sexual offender pursuant to Title 46, chapter 23, part 5"; and made minor changes in style. Amendment effective May 11, 2007.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Retroactive Applicability: Section 31, Ch. 483, L. 2007, provided: "[Sections 2, 3, and 19 through 24] [amending 41-5-216, 41-5-1513, 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, and 46-23-509] apply retroactively, within the meaning of 1-2-109, to:

(1) sexual offenders who are sentenced or who are in the custody or under the supervision of the department of corrections on or after July 1, 1989; and

(2) violent offenders who are sentenced or who are in the custody or under the supervision of the department of corrections on or after October 1, 1995."

41-5-217. Repealed. Sec. 4, Ch. 106, L. 1999.

History: En. Sec. 1, Ch. 466, L. 1995; amd. Sec. 47, Ch. 550, L. 1997; Sec. 41-5-605, MCA 1995; redes. 41-5-217 by Sec. 47, Ch. 286, L. 1997.

41-5-218 and 41-5-219 reserved.

41-5-220. Electronic records — youth records to be separate — formal policies and administrative rules required. (1) (a) The department and the youth court are required to adopt appropriate control methods to ensure adequate integrity, security, and confidentiality of any electronic records of a youth generated or maintained in any management information system.

(b) The office of the court administrator shall adopt formal policies, and the department shall adopt administrative rules to institute the requirements in subsection (1)(a).

(2) For the purposes of this part, any references to “sealing”, “physically sealed”, and “destroyed” must be interpreted to have the same meaning when applied to electronic records and must be applied to have the same force and effect. A sealed record must be made unavailable for access by any person unless upon court order as provided in 41-5-216. A destroyed record must be rendered inaccessible and unrecoverable and disposed of in a manner in which confidentiality is protected, which may include disassociating the offense and disposition information from the name of the youth.

(3) After October 1, 2005, any management information system that is developed and that contains formal or informal youth court records or department records must be maintained separately from any adult offender management information system in the criminal justice or corrections system.

History: En. Sec. 4, Ch. 423, L. 2005.

41-5-221. Penalty for unauthorized disclosure of or access to records. A person who discloses or accesses a formal youth court record, an informal youth court record, or a department record in violation of 41-5-215 or 41-5-216 is guilty of a misdemeanor and shall be fined \$500.

History: En. Sec. 5, Ch. 423, L. 2005.

Part 3 Custody and Detention

41-5-321. Taking into custody. (1) A youth may be taken into custody under the following circumstances:

(a) by a law enforcement officer pursuant to a lawful order or process of any court;

(b) by a law enforcement officer pursuant to a lawful arrest for violation of the law;

(c) by a juvenile home arrest officer or an officer listed in subsections (1)(a) and (1)(b) if a youth placed under a home arrest program has violated a condition of the placement and the home arrest officer or law enforcement officer has direct knowledge of the violation or a juvenile probation officer has provided the juvenile home arrest officer notice of a violation.

(2) The taking of a youth into custody is not an arrest except for the purpose of determining the validity of the taking under the constitution of Montana or the United States.

History: En. 10-1211 by Sec. 11, Ch. 329, L. 1974; R.C.M. 1947, 10-1211; MCA 1981, 41-5-302; reded. 41-3-1111 by Sec. 31(4), Ch. 465, L. 1983; Sec. 41-3-1111, MCA 1989; reded. 41-5-314 by Sec. 15, Ch. 547, L. 1991; Sec. 41-5-314, MCA 1995; reded. 41-5-321 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 2, Ch. 326, L. 1999; amd. Sec. 5, Ch. 114, L. 2001.

41-5-322. Release from custody — detention — shelter care. (1) Whenever a peace officer believes, on reasonable grounds, that a youth can be released to a responsible person, the peace officer may release the youth to that person upon receiving a written promise from the person to bring the youth before the probation officer at a time and place specified in the written promise, or a peace officer may release the youth under any other reasonable circumstances.

(2) Whenever the peace officer believes, on reasonable grounds, that the youth must be detained, the peace officer shall notify the probation officer immediately and shall, as soon as practicable, provide the probation officer with a written report of the peace officer's reasons for holding the youth in detention. If it is necessary to hold the youth pending appearance before the youth court, then the youth must be held in a place of detention, as provided in 41-5-348, that is approved by the youth court.

(3) If the peace officer believes that the youth must be sheltered, the peace officer shall notify the probation officer immediately and shall provide a written report of the peace officer's

reasons for placing the youth in shelter care. If the youth is then held, the youth must be placed in a shelter care facility approved by the youth court.

History: En. 10-1213 by Sec. 13, Ch. 329, L. 1974; amd. Sec. 1, Ch. 348, L. 1975; amd. Sec. 5, Ch. 571, L. 1977; R.C.M. 1947, 10-1213; amd. Sec. 7, Ch. 547, L. 1991; amd. Sec. 22, Ch. 286, L. 1997; Sec. 41-5-307, MCA 1995; redes. 41-5-322 by Sec. 47, Ch. 286, L. 1997.

41-5-323. Bail. A youth placed in detention or shelter care may be released on bail. The court shall use the provisions of Title 46, chapter 9, as guidance. In determining the amount of bail, the court shall consider the financial ability of the youth and the parents or legal custodian of the youth.

History: En. Sec. 3, Ch. 475, L. 1987; amd. Sec. 8, Ch. 547, L. 1991; Sec. 41-5-309, MCA 1995; redes. 41-5-323 by Sec. 47, Ch. 286, L. 1997.

41-5-324 through 41-5-330 reserved.

41-5-331. Rights of youth taken into custody — questioning — waiver of rights. (1) When a youth is taken into custody for questioning upon a matter that could result in a petition alleging that the youth is either a delinquent youth or a youth in need of intervention, the following requirements must be met:

(a) The youth must be advised of the youth's right against self-incrimination and the youth's right to counsel.

(b) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified.

(2) A youth may waive the rights listed in subsection (1) under the following situations:

(a) when the youth is 16 years of age or older, the youth may make an effective waiver;

(b) when the youth is under 16 years of age and the youth and the youth's parent or guardian agree, they may make an effective waiver; or

(c) when the youth is under 16 years of age and the youth and the youth's parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(1)(a), (1)(b); amd. Sec. 1, Ch. 385, L. 1979; amd. Sec. 7, Ch. 475, L. 1987; amd. Sec. 5, Ch. 515, L. 1987; (2) thru (6) En. Sec. 1, Ch. 475, L. 1987; amd. Sec. 2, Ch. 271, L. 1989; amd. Sec. 3, Ch. 547, L. 1991; amd. Sec. 11, Ch. 286, L. 1997; amd. Sec. 76, Ch. 550, L. 1997; Sec. 41-5-303, MCA 1995; redes. 41-5-331 by Sec. 47, Ch. 286, L. 1997.

41-5-332. Custody — hearing for probable cause. (1) When a youth is taken into custody for questioning, a hearing to determine whether there is probable cause to believe the youth is a delinquent youth or a youth in need of intervention must be held within 24 hours, excluding weekends and legal holidays. A hearing is not required if the youth is released prior to the time of the required hearing.

(2) When a youth is taken into custody for a violation of placement under a home arrest program, a hearing to determine whether a violation occurred must be held within 24 hours, excluding weekends and holidays.

(3) The probable cause hearing required under subsection (1) may be held in person or by videoconference by the youth court, a justice of the peace, a municipal or city judge, or a magistrate having jurisdiction in the case as provided in 41-5-203. If the probable cause hearing is held by a justice of the peace, a municipal or city judge, or a magistrate, a record of the hearing must be made by a court reporter or by a tape recording of the hearing or by an audio-video tape if the hearing is held by videoconference.

(4) A probable cause hearing may be conducted by telephone if other means of conducting the hearing are impractical. All written orders and findings of the court in a hearing conducted by telephone must bear the name of the judge or magistrate presiding in the case and the hour and date the order or findings were issued.

(5) A hearing is not required for a youth placed in detention for an alleged parole violation.

History: En. Sec. 12, Ch. 286, L. 1997; amd. Sec. 76, Ch. 550, L. 1997; amd. Sec. 3, Ch. 326, L. 1999; amd. Sec. 4, Ch. 532, L. 1999; amd. Sec. 1, Ch. 159, L. 2001.

41-5-333. Custody — hearing for probable cause — procedure. (1) At a probable cause hearing held pursuant to 41-5-332, the youth must be informed of the youth's constitutional rights and the youth's rights under this chapter.

(2) A parent, guardian, or custodian of the youth may be held in contempt of court for failing to be present at or to participate in the probable cause hearing unless the parent, guardian, or custodian:

(a) cannot be located through diligent efforts of the investigating peace officer or peace officers; or

(b) is excused by the court for good cause.

(3) At the probable cause hearing, a guardian ad litem may be appointed as provided in 41-5-1411.

History: En. Sec. 13, Ch. 286, L. 1997.

41-5-334. Custody — hearing for probable cause — determinations — detention — release. (1) If, at a probable cause hearing held pursuant to 41-5-332, it is determined that there is probable cause to believe that the youth is a delinquent youth or a youth in need of intervention, the court having jurisdiction in the case shall determine whether the youth should be retained in custody. If the court determines that continued custody of the youth is necessary and if the youth meets the criteria in 41-5-341 through 41-5-343, the youth may be placed in a detention facility, a youth assessment center, or a shelter care facility as provided in 41-5-345 through 41-5-348 but may not be placed in a jail or other facility used for the confinement of adults accused or convicted of criminal offenses.

(2) If probable cause is not found or if a probable cause hearing is not held within the time specified in 41-5-332, the youth must be immediately released from custody.

History: En. Secs. 14, 49(3)(f), Ch. 286, L. 1997.

41-5-335 through 41-5-340 reserved.

41-5-341. Criteria for placement of youth in secure detention facilities. A youth may be placed in a secure detention facility only if the youth:

(1) has allegedly committed an act that if committed by an adult would constitute a criminal offense and the alleged offense is one specified in 41-5-206;

(2) is alleged to be a delinquent youth and:

(a) has escaped from a correctional facility or secure detention facility;

(b) has violated a valid court order or a parole agreement;

(c) the youth's detention is required to protect persons or property;

(d) the youth has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;

(e) there are not adequate assurances that the youth will appear for court when required; or

(f) the youth meets additional criteria for secure detention established by the youth court in the judicial district that has current jurisdiction over the youth; or

(3) has been adjudicated delinquent and is awaiting final disposition of the youth's case.

History: En. 10-1212 by Sec. 12, Ch. 329, L. 1974; amd. Sec. 4, Ch. 571, L. 1977; R.C.M. 1947, 10-1212; amd. Sec. 1, Ch. 689, L. 1985; amd. Sec. 8, Ch. 475, L. 1987; amd. Sec. 7, Ch. 515, L. 1987; amd. Sec. 1, Ch. 610, L. 1987; amd. Sec. 3, Ch. 548, L. 1991; amd. Secs. 15, 49(3)(i), Ch. 286, L. 1997; Sec. 41-5-305, MCA 1995; red. 41-5-341 by Sec. 47, Ch. 286, L. 1997.

41-5-342. Criteria for placement of youth in shelter care facilities. A youth may be placed in a shelter care facility only if:

(1) the youth and the youth's family need shelter care to address their problematic situation and it is not possible for the youth to remain at home;

(2) the youth needs to be protected from physical or emotional harm;

(3) the youth needs to be deterred or prevented from immediate repetition of troubling behavior;

(4) shelter care is necessary to assess the youth and the youth's environment;

(5) shelter care is necessary to provide adequate time for case planning and disposition; or

(6) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family.

History: En. Sec. 16, Ch. 286, L. 1997.

41-5-343. Criteria for placement of youth in youth assessment centers. A youth may be placed in a youth assessment center only if:

- (1) the youth meets the requirements for placement in shelter care;
- (2) the youth has not committed an act that would be a felony offense if committed by an adult;
- (3) the youth needs an alternative, staff-secured site for evaluation and assessment of the youth's need for services;
- (4) the youth needs to be held accountable for the youth's actions with structured programming; and
- (5) the youth meets qualifications as outlined by the placement guidelines that are determined by the department and coordinated with the guidelines used by the youth placement committees.

History: En. Sec. 49(3)(h), Ch. 286, L. 1997.

41-5-344. Repealed. Sec. 8, Ch. 114, L. 2001.

History: En. 10-1214 by Sec. 14, Ch. 329, L. 1974; amd. Sec. 6, Ch. 571, L. 1977; R.C.M. 1947, 10-1214; amd. Sec. 3, Ch. 465, L. 1983; amd. Sec. 2, Ch. 737, L. 1985; amd. Sec. 1, Ch. 11, Sp. L. June 1986; amd. Sec. 9, Ch. 475, L. 1987; amd. Sec. 5, Ch. 434, L. 1989; amd. Sec. 7, Ch. 105, L. 1991; amd. Sec. 5, Ch. 547, L. 1991; amd. Secs. 4, 5, Ch. 548, L. 1991; amd. Secs. 20, 21, Ch. 799, L. 1991; amd. Sec. 62, Ch. 10, L. 1993; amd. Sec. 5, Ch. 528, L. 1995; amd. Secs. 17, 49(3)(f), Ch. 286, L. 1997; Sec. 41-5-306, MCA 1995; red. 41-5-344 by Sec. 47, Ch. 286, L. 1997.

41-5-345. Limitation on placement of youth in need of intervention. (1) After a probable cause hearing provided for in 41-5-332, a youth alleged to be a youth in need of intervention may be placed only in shelter care, as provided in 41-5-347.

(2) A youth alleged or found to be a youth in need of intervention may not be placed in a jail, secure detention facility, or correctional facility.

History: En. Sec. 18, Ch. 286, L. 1997; amd. Sec. 76, Ch. 550, L. 1997.

41-5-346. Limitation on placement of delinquent youth. After a probable cause hearing provided for in 41-5-332, a youth alleged to be a delinquent youth may be placed only:

- (1) in shelter care, in the facilities described in 41-5-347;
- (2) under home arrest as provided in 41-5-347;
- (3) in detention, as provided in 41-5-348; or
- (4) in a community youth court program.

History: En. Sec. 19, Ch. 286, L. 1997.

41-5-347. Place of shelter care. Placement in shelter care means placement in one of the following:

- (1) in a licensed youth care facility as defined in 52-2-602; or
- (2) under home arrest, with or without a monitoring device, as provided in Title 46, chapter 18, part 10, either in the youth's own home or in a facility described in subsection (1).

History: En. Secs. 20, 49(3)(f), Ch. 286, L. 1997; amd. Sec. 76, Ch. 51, L. 1999.

41-5-348. Place of detention. Placement in detention means placement in one of the following facilities:

- (1) a short-term detention center;
- (2) a youth detention facility, including a regional detention facility; or
- (3) a secure detention facility outside the state or operated by an Indian tribe that is under contract to the state or a subdivision of the state and that is in substantial compliance with the licensing requirements contained in rules adopted by the department.

History: En. Sec. 21, Ch. 286, L. 1997; amd. Sec. 5, Ch. 532, L. 1999.

41-5-349. Youth not to be detained in jail — exceptions — time limitations. (1) A youth may not be detained or otherwise placed in a jail or other adult detention facility except as provided in 41-5-206 and this section.

(2) A youth who has allegedly committed an offense that if committed by an adult would constitute a criminal offense may be temporarily detained in a jail or other adult detention facility for a period not to exceed:

- (a) 6 hours, but in no case overnight, for the purpose of identification, processing, or transfer of the youth to an appropriate detention facility or shelter care facility; or

(b) 24 hours, excluding weekends and legal holidays, if the youth is awaiting a probable cause hearing pursuant to 41-5-332.

(3) The exception provided for in subsection (2)(b) applies only if:

(a) the court having jurisdiction over the youth is outside a metropolitan statistical area;

(b) alternative facilities are not available or alternative facilities do not provide adequate security; and

(c) the youth is kept in an area that provides physical as well as sight and sound separation from adults accused or convicted of criminal offenses.

(4) Whenever, despite all good faith efforts to comply with the time limitations specified in subsection (2), the limitations are exceeded, this circumstance does not serve as grounds for dismissal of the case nor does this circumstance constitute a defense in a subsequent delinquency or criminal proceeding.

History: En. Sec. 1, Ch. 547, L. 1991; amd. Sec. 49, Ch. 18, L. 1995; amd. Sec. 23, Ch. 286, L. 1997; Sec. 41-5-311, MCA 1995; redes. 41-5-349 by Sec. 47, Ch. 286, L. 1997.

41-5-350. Permitted acts — detention of youth in law enforcement facilities — criteria. (1) Nothing in this chapter precludes the detention of youth in a police station or other law enforcement facility that is attached to or part of a jail if:

(a) the area where the youth is held is an unlocked, multipurpose area, such as a lobby, office, interrogation room, or other area that is not designated or used as a secure detention area or that is not part of a secure detention area, or, if part of such an area, that is used only for the purpose of processing, such as a booking room;

(b) the youth is not secured to a cuffing rail or other stationary object during the period of detention;

(c) use of the area is limited to ensuring custody of the youth for the purpose of identification, processing, or transfer of the youth to an appropriate detention or shelter care facility;

(d) the area is not designed or intended to be used for residential purposes; and

(e) the youth is under continuous visual supervision by a law enforcement officer or by facility staff during the period of time that the youth is held in detention.

(2) For purposes of this section, “secure detention” means the detention of youth or confinement of adults accused or convicted of criminal offenses in a physically restricting setting, including but not limited to a locked room or set of rooms or a cell designed to prevent a youth or adult from departing at will.

History: En. Sec. 7, Ch. 548, L. 1991; Sec. 41-5-313, MCA 1995; redes. 41-5-350 by Sec. 47, Ch. 286, L. 1997.

41-5-351 through 41-5-354 reserved.

41-5-355. Excessive juvenile population — confinement of juveniles in alternate placements. (1) The department shall determine the capacity for state youth correctional facilities. The department shall notify all district courts, sheriffs, and youth courts of the capacity for each state youth correctional facility by sending a report to each annually.

(2) If the population of a state youth correctional facility exceeds the capacity established by the department, the director of the department may declare that the capacity has been exceeded and temporarily stop admissions to the facility. The director shall notify each district court, sheriff, and youth court that delinquent or criminally convicted youth will not be accepted by the department for admission into the facility until the population is reduced to less than the capacity determined by the department in subsection (1).

(3) If the director of the department declares that the capacity has been exceeded, the department shall place delinquent youth committed to a state youth correctional facility or criminally convicted youth in alternate placements based on the needs of the delinquent youth or criminally convicted youth. If a youth is denied placement in a state youth correctional facility under this section, the department shall inform and seek approval of the district court of the intended alternative placement prior to placing the youth.

(4) The department may enter into contracts with the federal government, other states, local governments, public or private corporations, and other entities that have suitable facilities for confining delinquent youth or criminally convicted youth committed to the department, either because a state youth correctional facility has exceeded its capacity or because the

department has no youth correctional facility that is adequate for certain delinquent youth or criminally convicted youth.

History: En. Sec. 16, Ch. 532, L. 1999.

Part 12 Preliminary Investigation

41-5-1201. Preliminary inquiry — referral of youth in need of care. (1) Whenever the court receives information from an agency or person, including a parent or guardian of a youth, based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of intervention or that the youth is subject to a court order or consent order and has violated the terms of an order, a probation officer or an assessment officer shall make a preliminary inquiry into the matter.

(2) If the probation officer or assessment officer determines that the facts indicate that the youth is a youth in need of care, as defined in 41-3-102, the matter must be immediately referred to the department of public health and human services.

History: En. 10-1209 by Sec. 9, Ch. 329, L. 1974; amd. Sec. 2, Ch. 571, L. 1977; R.C.M. 1947, 10-1209; amd. Sec. 4, Ch. 515, L. 1987; amd. Sec. 58, Ch. 609, L. 1987; amd. Sec. 1, Ch. 271, L. 1989; amd. Sec. 193, Ch. 546, L. 1995; amd. Sec. 1, Ch. 185, L. 1997; amd. Secs. 5, 49(3)(f), Ch. 286, L. 1997; Sec. 41-5-301, MCA 1995; redes. 41-5-1201 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 6, Ch. 114, L. 2001.

41-5-1202. Preliminary inquiry — procedure — youth assessment. (1) In conducting a preliminary inquiry under 41-5-1201, the probation officer or assessment officer shall:

(a) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;

(b) determine whether the matter is within the jurisdiction of the court;

(c) determine, if the youth is in detention, a youth assessment center, or shelter care, whether detention, placement in a youth assessment center, or shelter care should be continued or modified based upon criteria set forth in 41-5-341 through 41-5-343.

(2) In conducting a preliminary inquiry, the probation officer or assessment officer may:

(a) require the presence of any person relevant to the inquiry;

(b) request subpoenas from the judge to accomplish this purpose;

(c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency;

(d) perform a youth assessment pursuant to 41-5-1203.

History: En. Secs. 6, 49(3)(f), Ch. 286, L. 1997; amd. Sec. 78(5)(a), Ch. 550, L. 1997.

41-5-1203. Preliminary inquiry — youth assessment. (1) The probation officer or assessment officer may perform a youth assessment if:

(a) a youth has been referred to the youth court as an alleged youth in need of intervention with a minimum of two misdemeanor offenses or three offenses in the past year that would not be offenses if the youth were an adult;

(b) the youth is alleged to be a youth in need of intervention or a delinquent youth and the youth or the youth's parents or guardian requests the youth assessment and both the youth and the parents or guardian are willing to cooperate with the assessment process; or

(c) the circumstances surrounding a youth who has committed an act that would be a felony if committed by an adult indicate the need for a youth assessment and the safety of the community has been considered in determining where the youth assessment is conducted.

(2) A youth assessment:

(a) must be a multidisciplinary effort that may include, but is not limited to a chemical dependency evaluation of the youth, an educational assessment of the youth, an evaluation to determine if the youth has mental health needs, or an assessment of the need for any family-based services or other services provided by the department of public health and human services or other state and local agencies. The education component of the youth assessment is intended to address attendance, behavior, and performance issues of the youth. The education component is not intended to interfere with the right to attend a nonpublic or home school that complies with 20-5-109.

(b) must include a summary of the family's strengths and needs as they relate to addressing the youth's behavior;

(c) may occur in a youth's home, with or without electronic monitoring, or pursuant to 41-5-343 in a youth assessment center licensed by the department of public health and human services or in any other entity licensed by the department of public health and human services. The county shall provide adequate security in other licensed entities through provision of additional staff or electronic monitoring. The staff provided by the county must meet licensing requirements applicable to the licensed entity in which the youth is being held.

(3) The assessment officer arranging the youth assessment shall work with the parent or guardian of the youth to coordinate the performance of the various parts of the assessment with any providers that may already be working with the family or providers that are chosen by the family to the extent possible to meet the goals of the Youth Court Act.

History: En. Sec. 49(3)(g), Ch. 286, L. 1997; amd. Sec. 78(5)(c), Ch. 550, L. 1997.

41-5-1204. Preliminary inquiry — determinations — release. Once relevant information is secured after a preliminary inquiry under 41-5-1201, the probation officer or assessment officer shall:

(1) determine whether the interest of the public or the youth requires that further action be taken;

(2) terminate the inquiry upon the determination that no further action be taken; and

(3) release the youth immediately upon the determination that the filing of a petition is not authorized.

History: En. Secs. 7, 49(3)(f), Ch. 286, L. 1997.

41-5-1205. Preliminary inquiry — dispositions available to probation officer. Upon determining that further action is required after a preliminary inquiry under 41-5-1201, the probation officer or assessment officer may:

(1) arrange informal disposition as provided in 41-5-1301; or

(2) refer the matter to the county attorney for filing a petition in youth court charging the youth to be a delinquent youth or a youth in need of intervention or for filing an information in the district court as provided in 41-5-206.

History: En. Secs. 8, 49(3)(f), Ch. 286, L. 1997.

41-5-1206. Investigation, fingerprints, and photographs. (1) All law enforcement investigations relating to a delinquent youth or youth in need of intervention must be conducted in accordance with this chapter and Title 46.

(2) A youth may be fingerprinted or photographed for criminal identification purposes:

(a) if arrested for conduct alleged to be unlawful that would be a felony if committed by an adult;

(b) pursuant to a search warrant, supported by probable cause, issued by a judge, justice of the peace, or magistrate; or

(c) upon the order of the youth court judge, after a petition alleging delinquency has been filed.

(3) Fingerprint records and photographs may be used by the department of justice or any law enforcement agency in the judicial district for comparison and identification purposes in any other investigation.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(2); amd. Sec. 2, Ch. 484, L. 1981; amd. Sec. 6, Ch. 515, L. 1987; amd. Sec. 1, Ch. 346, L. 1991; amd. Sec. 1, Ch. 603, L. 1993; amd. Sec. 4, Ch. 528, L. 1995; amd. Sec. 22, Ch. 550, L. 1997; Sec. 41-5-304, MCA 1995; redes. 41-5-1206 by Sec. 47, Ch. 286, L. 1997.

41-5-1207 through 41-5-1209 reserved.

41-5-1210. Information to be collected by juvenile probation officer or assessment officer. The juvenile probation officer or assessment officer shall collect the following information regarding a youth:

(1) biographical data;

(2) a description of prior and current offenses, including criminal history;

(3) a listing of known or suspected associates;

(4) any gang or drug involvement;

(5) field investigation data;

(6) motor vehicle ownership and offense data, if any;

- (7) whether the youth is a suspect in other criminal investigations;
- (8) history of any victimization of others by the youth;
- (9) the youth's status offense history;
- (10) existence of active warrants;
- (11) school, employment, and family histories;
- (12) social and medical services histories; and
- (13) prior conduct in a youth detention or correctional facility, if any.

History: En. Sec. 6, Ch. 532, L. 1999.

Part 13

Informal Proceeding

41-5-1301. Informal disposition. After a preliminary inquiry under 41-5-1201, the probation officer or assessment officer upon determining that further action is required and that referral to the county attorney is not required may:

- (1) provide counseling, refer the youth and the youth's family to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detention; or
- (2) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-1302 through 41-5-1304 if the treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if the probation officer or assessment officer proceeds no further unless authorized by the county attorney.

History: En. Sec. 9, Ch. 286, L. 1997, and Sec. 78(5)(b), Ch. 550, L. 1997; amd. Sec. 7, Ch. 532, L. 1999.

41-5-1302. Consent adjustment without petition. (1) Before referring the matter to the county attorney and subject to the limitations in subsection (3), the probation officer or assessment officer may enter into a consent adjustment and give counsel and advice to the youth, the youth's family, and other interested parties if it appears that:

- (a) the admitted facts bring the case within the jurisdiction of the court;
- (b) counsel and advice without filing a petition would be in the best interests of the child, the family, and the public; and
- (c) the youth may be a youth in need of intervention and the probation officer or assessment officer believes that the parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

(2) Any probation or other disposition imposed under this section against a youth must conform to the following procedures:

(a) Every consent adjustment must be reduced to writing and signed by the youth and the youth's parents or the person having legal custody of the youth.

(b) If the probation officer or assessment officer believes that the youth is a youth in need of intervention, the probation officer or assessment officer shall determine that the parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the youth's behavior and that the youth continues to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

(c) Approval by the youth court judge is required if the complaint alleges commission of a felony or if the youth has been or will be in any way detained.

(3) A consent adjustment without petition under this section may not be used to dispose of a youth's alleged second or subsequent offense if:

(a) the youth has admitted commission of or has been adjudicated or sentenced for a prior offense that would be a felony if committed by an adult;

(b) the second or subsequent offense would be a felony if committed by an adult and was committed within 3 years of a prior offense; or

(c) the second or subsequent offense would be a misdemeanor if committed by an adult and was committed within 3 years of a prior offense, other than a felony, unless the probation officer

notifies the youth court and obtains written approval from the county attorney and the youth court judge.

(4) For purposes of subsection (3), related offenses committed by a youth during the same 24-hour period must be considered a single offense.

History: En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(1), (2); amd. Sec. 2, Ch. 231, L. 1991; amd. Sec. 25, Ch. 550, L. 1997; Sec. 41-5-401, MCA 1995; redes. 41-5-1302 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 8, Ch. 532, L. 1999.

41-5-1303. Communications privileged. An incriminating statement relating to any act or omission constituting delinquency or need of intervention made by the participant to the person giving counsel or advice in the discussions or conferences incident thereto may not be used against the declarant in any proceeding under this chapter, nor may the incriminating statement be admissible in any criminal proceeding against the declarant. This section does not apply to the use of voluntary and reliable statements that are offered for impeachment purposes.

History: En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(3); amd. Sec. 8, Ch. 515, L. 1987; amd. Sec. 76, Ch. 550, L. 1997; Sec. 41-5-402, MCA 1995; redes. 41-5-1303 by Sec. 47, Ch. 286, L. 1997.

41-5-1304. Disposition permitted under consent adjustment. (1) The following dispositions may be imposed by consent adjustment:

- (a) probation;
- (b) placement of the youth in substitute care in a youth care facility, as defined in 52-2-602 and pursuant to a recommendation made under 41-5-121;
- (c) placement of the youth with a private agency responsible for the care and rehabilitation of the youth pursuant to a recommendation made under 41-5-121;
- (d) restitution, as provided in 41-5-1521, upon approval of the youth court judge;
- (e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10;
- (f) confiscation of the youth's driver's license, if the youth has one, by the probation officer for a specified period of time, not to exceed 90 days. The probation officer shall notify the department of justice of the confiscation and its duration. The department of justice may not enter the confiscation on the youth's driving record. The probation officer shall notify the department of justice when the confiscated driver's license has been returned to the youth. A youth's driver's license may be confiscated under this subsection more than once. The probation officer may, in the probation officer's discretion and with the concurrence of a parent or guardian, return a youth's confiscated driver's license before the termination of the time period for which it had been confiscated. The confiscation may not be used by an insurer as a factor in determining the premium or part of a premium to be paid for motor vehicle insurance covering the youth or a vehicle or vehicles driven by the youth, nor may it be used as grounds for denying coverage for an accident or other occurrence under an existing policy;
- (g) a requirement that the youth receive counseling services;
- (h) placement in a youth assessment center for up to 10 days;
- (i) placement of the youth in detention for up to 3 days on a space-available basis at the county's expense, which is not reimbursable under part 19 of this chapter;
- (j) a requirement that the youth perform community service;
- (k) a requirement that the youth participate in victim-offender mediation;
- (l) an agreement that the youth pay a contribution covering all or a part of the costs for the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth, including the costs of counseling;
- (m) an agreement that the youth pay a contribution covering all or a part of the costs of a victim's counseling or restitution for damages that result from the offense for which the youth is disposed;
- (n) any other condition ordered by the court to accomplish the goals of the consent adjustment, including but not limited to mediation or youth assessment. Before ordering youth assessment, the court shall provide the family an estimate of the cost of youth assessment, and the court shall take into consideration the financial resources of the family before ordering parental or guardian contribution for the costs of youth assessment.

(2) If the youth violates a parole agreement as provided for in 52-5-126, the youth must be returned to the court for further disposition. A youth may not be placed in a state youth correctional facility under consent adjustment.

(3) If the youth is placed in substitute care, an assessment placement, or detention requiring payment by any state department or local government agency, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the adjudication, disposition, supervision, care, placement, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

History: En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(4); amd. Sec. 3, Ch. 246, L. 1979; amd. Sec. 3, Ch. 484, L. 1981; amd. Sec. 1, Ch. 129, L. 1983; amd. Sec. 7, Ch. 363, L. 1983; amd. Sec. 4, Ch. 465, L. 1983; amd. Sec. 5, Ch. 531, L. 1985; amd. Sec. 7, Ch. 14, Sp. L. June 1986; amd. Sec. 59, Ch. 609, L. 1987; amd. Sec. 8, Ch. 105, L. 1991; amd. Sec. 3, Ch. 696, L. 1991; amd. Sec. 6, Ch. 528, L. 1995; amd. Sec. 194, Ch. 546, L. 1995; amd. Sec. 2, Ch. 185, L. 1997; amd. Sec. 26, Ch. 550, L. 1997; Sec. 41-5-403, MCA 1995; redes. 41-5-1304 by Sec. 47, Ch. 286, L. 1997.

Part 14

Formal Proceeding — Procedure

41-5-1401. Petition — county attorney — procedure — release from custody. (1) The county attorney may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of intervention. The application must be supported by evidence that the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

(2) A petition charging a youth who is held in detention or a youth assessment center must be filed within 7 working days from the date the youth was first taken into custody or the petition must be dismissed and the youth released unless good cause is shown to further detain the youth.

(3) If a petition is not filed under this section, the complainant and victim, if any, must be informed by the probation officer or assessment officer of the action and the reasons for not filing and must be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer or assessment officer, and make the final decision as to whether a petition is filed.

History: En. Secs. 10, 49(3)(f), Ch. 286, L. 1997.

41-5-1402. Petition — form and content. (1) A petition initiating proceedings under this chapter must be signed by the county attorney, must be entitled "In the Matter of..., a youth", and must set forth with specificity:

- (a) the facts necessary to invoke the jurisdiction of the court, together with a statement alleging the youth to be a delinquent youth or a youth in need of intervention;
- (b) the charge of an offense, that must:
 - (i) state the name of the offense;
 - (ii) cite in customary form the statute, rule, or other provisions of law that the youth is alleged to have violated;
 - (iii) state the facts constituting the offense in ordinary and concise language and in a manner that enables a person of common understanding to know what is intended; and
 - (iv) state the time and place of the offense as definitely as possible;
- (c) the name, birth date, and residence address of the youth;
- (d) the names and residence addresses of the parents, guardian, or spouse of the youth and, if the parents, guardian, or spouse do not reside or cannot be found within the state or if there is none, the adult relative residing nearest to the court;
- (e) whether the youth is in detention, a youth assessment center, or shelter care and, if so, the place of detention, assessment, or shelter care and the time that the youth was detained or sheltered;
- (f) if any of the matters required to be set forth by this section are not known, a statement of those matters and the fact that they are not known; and

(g) a list of witnesses to be used in proving the commission of the offense or offenses charged in the petition, together with their residence addresses. The names and addresses of any witnesses discovered after the filing of the petition must be furnished to the youth upon request.

(2) When a county attorney files a delinquency petition alleging that a youth committed an offense that would be a felony if committed by an adult and that is transferable under 41-5-206 or in which a youth 12 years of age or older allegedly used a firearm, the county attorney shall indicate in the petition whether the county attorney designates the proceeding an extended jurisdiction juvenile prosecution. When the county attorney files a delinquency petition alleging that a youth committed any other offense that would be a felony if committed by an adult, the county attorney may request that the court designate the proceeding an extended jurisdiction juvenile prosecution.

History: En. 10-1215 by Sec. 15, Ch. 329, L. 1974; amd. Sec. 7, Ch. 571, L. 1977; R.C.M. 1947, 10-1215; amd. Sec. 5, Ch. 498, L. 1997; amd. Secs. 27, 76, Ch. 550, L. 1997; Sec. 41-5-501, MCA 1995; redes. 41-5-1402 by Sec. 47, Ch. 286, L. 1997.

41-5-1403. Summons. (1) After a petition has been filed, summons must be served directly to:

- (a) the youth;
 - (b) the youth's parent or parents having actual custody of the youth or the youth's guardian or custodian, as the case may be; and
 - (c) other persons as the court may direct.
- (2) The summons must:
- (a) require the parties to whom it is directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition;
 - (b) advise the parties of their right to counsel under the Montana Youth Court Act; and
 - (c) have attached to it a copy of the petition.
- (3) The court may endorse upon the summons an order directing the person or persons having the physical custody or control of the youth to bring the youth to the hearing.

(4) If it appears to the court that the youth needs to be placed in detention or shelter care, the judge may endorse on the summons an order directing the officer serving the summons to at once take the youth into custody and to take the youth to the place of detention or shelter care designated by the court, subject to the rights of the youth and parent or person having legal custody of the youth as set forth in the provisions of the Montana Youth Court Act relating to detention and shelter care criteria and postdetention proceedings.

(5) If a youth is placed in detention or shelter care under any provision of this chapter pending an adjudication, the court shall, as soon as practicable, conduct a probable cause hearing as provided in 41-5-332.

(6) The youth court judge may also admit the youth to bail in accordance with Title 46, chapter 9.

History: En. 10-1216 by Sec. 16, Ch. 329, L. 1974; amd. Sec. 8, Ch. 571, L. 1977; R.C.M. 1947, 10-1216; amd. Sec. 10, Ch. 475, L. 1987; amd. Sec. 9, Ch. 515, L. 1987; amd. Sec. 9, Ch. 547, L. 1991; amd. Sec. 25, Ch. 286, L. 1997; Sec. 41-5-502, MCA 1995; redes. 41-5-1403 by Sec. 47, Ch. 286, L. 1997.

41-5-1404. Service of summons. (1) Any youth who is the subject of a proceeding under this chapter must be personally served with summons at least 5 days before the time stated for appearance.

(2) Service of summons on all other persons designated in 41-5-1403(1) shall be made in accordance with Rule 4D of the Montana Rules of Civil Procedure, except that in all cases service shall be completed at least 5 days before the time stated for appearance.

(3) If a party referred to in subsection (2) herein is not personally served before a hearing and has not secluded himself with an attempt to delay or disrupt any proceeding, such party may appear within a reasonable time subsequent to the hearing and, on motion to the court, request a rehearing. The motion may be granted at the discretion of the judge if a rehearing would be in the best interest of the youth.

(4) The court may authorize payment from county funds of costs of service and necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

(5) An actual abandonment of a youth by his parent or parents shall constitute a waiver of summons and notice requirements by the parent or parents. A return endorsed upon the

summons showing inability to serve summons constitutes prima facie evidence of actual abandonment.

(6) The youth court may, in the interests of justice, shorten the notice requirements contained herein, and such notice of shortened time shall be endorsed on the summons.

(7) A party, other than the youth, may waive service of summons on himself by written stipulation or by voluntary appearance at the hearing. If the youth is present at the hearing, his counsel may waive service of summons in his behalf.

History: En. 10-1217 by Sec. 17, Ch. 329, L. 1974; amd. Sec. 5, Ch. 100, L. 1977; R.C.M. 1947, 10-1217; Sec. 41-5-503, MCA 1995; redes. 41-5-1404 by Sec. 47, Ch. 286, L. 1997.

41-5-1405. Disqualification of judges. The statutes of the state of Montana relating to disqualification of judges in criminal proceedings shall apply to all proceedings under this chapter.

History: En. 10-1223 by Sec. 23, Ch. 329, L. 1974; R.C.M. 1947, 10-1223; amd. Sec. 2, Ch. 515, L. 1987; Sec. 41-5-202, MCA 1995; redes. 41-5-1405 by Sec. 47, Ch. 286, L. 1997.

41-5-1406 through 41-5-1410 reserved.

41-5-1411. Appointment of guardian ad litem. The court at any stage of a proceeding on a petition under this chapter may appoint a guardian ad litem for a youth if the youth has no parent or guardian appearing in his behalf or if their interests conflict with those of the youth. A party to the proceeding or an employee or representative of a party may not be appointed as guardian ad litem.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(4); Sec. 41-5-512, MCA 1995; redes. 41-5-1411 by Sec. 47, Ch. 286, L. 1997.

41-5-1412. Rights and obligations — persons to be advised — contempt. (1) A person afforded rights under this chapter must be advised of those rights and any other rights existing under law at the time of the person's first appearance in a proceeding on a petition under the Montana Youth Court Act and at any other time specified in that act or other law.

(2) A person must be advised of obligations, including possible assessments and related costs, that may arise under this chapter, including the possibility that the person may be required to reimburse the state or local governments for costs attributable to the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth and may be required to participate in counseling, treatment, or other support services.

(3) A youth's parents or guardians are obligated to assist and support the youth court in implementing the court's orders concerning a youth under youth court jurisdiction, and the parents or guardians are subject to the court's contempt powers if they fail to do so. The youth court personnel shall assist the parents to the extent possible in implementing and enforcing interventions and consequences designed to modify the youth's behavior.

(4) A parent has a right to review the results of a youth assessment and to place a rebuttal, statement, or additional information in the youth's file in youth court.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(6); amd. Sec. 29, Ch. 550, L. 1997; Sec. 41-5-515, MCA 1995; redes. 41-5-1412 by Sec. 47, Ch. 286, L. 1997.

41-5-1413. Right to counsel — assignment of counsel. In all proceedings following the filing of a petition alleging that a youth is a delinquent youth or youth in need of intervention, the youth and the parents or guardian of the youth must be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained for the youth, the court shall order the office of state public defender, provided for in 47-1-201, to assign counsel for the youth pursuant to the Montana Public Defender Act, Title 47, chapter 1, unless the right to counsel is waived by the youth and the parents or guardian. Neither the youth nor the youth's parents or guardian may waive the right to counsel after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(3); amd. Sec. 1, Ch. 386, L. 1979; amd. Sec. 4, Ch. 484, L. 1981; amd. Sec. 60, Ch. 609, L. 1987; amd. Sec. 28, Ch. 550, L. 1997; Sec. 41-5-511, MCA 1995; redes. 41-5-1413 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 37, Ch. 449, L. 2005.

41-5-1414. Right to confront witnesses. In a proceeding on a petition, a party is entitled to:

- (1) the opportunity to introduce evidence and otherwise be heard on the party's own behalf;
- (2) confront and cross-examine witnesses testifying against the party; and
- (3) admit or deny the allegations against the party in the petition.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(5); Sec. 41-5-513, MCA 1995; redes. 41-5-1414 by Sec. 47, Ch. 286, L. 1997.

41-5-1415. Admissibility of confession or illegally seized evidence. In a proceeding alleging a youth to be a delinquent youth:

- (1) an extrajudicial statement that would be constitutionally inadmissible in a criminal matter may not be received in evidence;
- (2) evidence illegally seized or obtained may not be received in evidence to establish the allegations of a petition against a youth; and
- (3) an extrajudicial admission or confession made by the youth out of court is insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(1)(c); amd. Sec. 7, Ch. 528, L. 1995; Sec. 41-5-514, MCA 1995; redes. 41-5-1415 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 9, Ch. 532, L. 1999.

41-5-1416. Victims and witnesses of juvenile felony offenses — consultation — notification of proceedings. (1) The attorney general shall ensure that the services and assistance that must be provided under Title 46, chapter 24, to a victim or witness of a crime are also provided to the victim or witness of a juvenile felony offense.

(2) In a proceeding filed under this part, the county attorney or a designee shall consult with the victim of a juvenile felony offense regarding the disposition of the case, including:

- (a) a dismissal of the petition filed under 41-5-1402;
- (b) a reduction of the charge to misdemeanor;
- (c) the release of the youth from detention or shelter care pending the adjudicatory hearing or pending a probable cause hearing. The consultation required by this subsection (2)(c) must take place prior to the youth's release, whether or not the county attorney or designee has received information from the victim under subsection (3)(a), unless the county attorney or designee is unable to contact the victim after making a good faith effort to contact the victim.

(d) the disposition of the youth.

(3) (a) Whenever possible, a person described in subsection (3)(b) who provides the appropriate agency with a current address and telephone number must receive prompt advance notification of youth court case proceedings, including:

- (i) the filing of a petition under 41-5-1402;
- (ii) the release of the youth from detention or shelter care; and
- (iii) proceedings in the adjudication of the petition, including, when applicable, entry of a consent decree under 41-5-1501, the setting of a date for the adjudicatory hearing under 41-5-1502, the setting of a date for the dispositional hearing under 41-5-1511, the disposition made, and the release of the youth from a youth correctional facility.

(b) A person entitled to notification under this subsection (3) must be a victim, as defined in 41-5-103, of a juvenile felony offense.

(c) The county attorney or a designee who provides the consultation regarding the disposition of a case required in subsection (2) shall give the victim the opportunity to provide the victim's current telephone number and address and shall provide the victim with the name and address of the agency or agencies responsible for operation of youth detention, correctional, or shelter care facilities that are responsible for the custody of the youth.

(d) The appropriate official or agency shall provide the notification required by this subsection (3) in the same manner as required for offenses committed by adults.

(4) For purposes of this section, "juvenile felony offense" means an offense committed by a juvenile that, if committed by an adult, would constitute a felony offense. The term includes any offense for which a juvenile may be declared a serious juvenile offender, as defined in 41-5-103.

History: En. Sec. 1, Ch. 170, L. 1991; amd. Sec. 6, Ch. 466, L. 1995; amd. Sec. 43, Ch. 286, L. 1997; amd. Sec. 57, Ch. 550, L. 1997; Sec. 46-24-207, MCA 1995; redes. 41-5-1416 by Sec. 77, Ch. 550, L. 1997; amd. Sec. 1, Ch. 102, L. 2001.

41-5-1417 through 41-5-1420 reserved.

41-5-1421. Posttrial motions. All posttrial motions and other remedies available to an adult in a criminal proceeding under the Montana Code of Criminal Procedure are available to a youth proceeded against under this chapter.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(7); Sec. 41-5-531, MCA 1995; redes. 41-5-1421 by Sec. 47, Ch. 286, L. 1997.

41-5-1422. Modification of court orders — notice to department — hearing. (1) An order of the court may be modified at any time.

(2) In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and a subsequent hearing.

History: En. Sec. 40, Ch. 550, L. 1997.

41-5-1423. Appeals. (1) Any party other than the state may appeal from a judgment of the court to the supreme court in the manner provided by law. The appeal shall be heard by the supreme court upon the files, records, and transcript of the evidence of the juvenile court.

(2) The appeal to the supreme court does not stay the judgment appealed from, but the supreme court may order a stay upon application and hearing consistent with the provisions of this chapter if suitable provision is made for the care and custody of the youth. If the order appealed from grants the legal custody of the youth to or withholds it from one or more of the parties to the appeal, the appeal shall be heard at the earliest practicable time.

History: En. 10-1225 by Sec. 25, Ch. 329, L. 1974; R.C.M. 1947, 10-1225; Sec. 41-5-532, MCA 1995; redes. 41-5-1423 by Sec. 47, Ch. 286, L. 1997.

41-5-1424 through 41-5-1430 reserved.

41-5-1431. Probation revocation proceeding — petition — hearing — disposition.

(1) A youth on probation incident to an adjudication that the youth is a delinquent youth or a youth in need of intervention and that the youth has violated a term of probation may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation must be done by filing in the original proceeding a petition styled “petition to revoke probation”.

(2) Petitions to revoke probation must be screened, reviewed, and prepared in the same manner and must contain the same information as petitions alleging delinquency or need of intervention. Procedures of the Montana Youth Court Act regarding taking into custody and detention apply. The petition must state the terms of probation alleged to have been violated and the factual basis for the allegations.

(3) The standard of proof in probation revocation proceedings is the same standard used in probation revocation of an adult, and the hearing must be before the youth court without a jury. In all other respects, proceedings to revoke probation are governed by the procedures, rights, and duties applicable to proceedings on petitions alleging that the youth is delinquent or a youth in need of intervention. If a youth is found to have violated a term of probation, the youth court may make any judgment of disposition that could have been made in the original case.

History: En. 10-1228 by Sec. 28, Ch. 329, L. 1974; R.C.M. 1947, 10-1228; amd. Sec. 45, Ch. 550, L. 1997; Sec. 41-5-533, MCA 1995; redes. 41-5-1431 by Sec. 47, Ch. 286, L. 1997.

41-5-1432. Enforcement of restitution orders. If the court orders payment of restitution and the youth fails to pay the restitution in accordance with the payment schedule or structure established by the court or probation officer, the youth’s probation officer may, on the officer’s own motion or at the request of the victim, file a petition for violation of probation or ask the court to hold a hearing to determine whether the conditions of probation should be changed. The probation officer shall ask for a hearing if the restitution has not been paid prior to 60 days before the term of probation expires. The court shall schedule and hold the hearing before the youth’s term of probation expires.

History: En. Sec. 12, Ch. 498, L. 1997.

Part 15
Formal Proceeding — Hearing — Disposition

41-5-1501. Consent decree with petition. (1) (a) Subject to the provisions of subsection (2), after the filing of a petition under 41-5-1402 and before the entry of a judgment, the court may, on motion of counsel for the youth or on the court's own motion, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services and agreed to by all necessary parties. The court's order continuing the youth under supervision under this section is known as a "consent decree". Except as provided in subsection (1)(b), the procedures used and dispositions permitted under this section must conform to the procedures and dispositions specified in 41-5-1302 through 41-5-1304 relating to consent adjustments without petition and the responsibility of the youth's parents or guardians to pay a contribution for the costs of placement in substitute care.

(b) A youth may be placed in detention for up to 10 days on a space-available basis at the county's expense, which is not reimbursable under part 19 of this chapter.

(2) A consent decree under this section may not be used by the court unless the youth admits guilt for a charge of an offense set forth in the petition and accepts responsibility for the youth's actions.

(3) If the youth or the youth's counsel objects to a consent decree, the court shall proceed to findings, adjudication, and disposition of the case.

(4) If, either prior to discharge by probation services or expiration of the consent decree, a new petition alleging that the youth is a delinquent youth or a youth in need of intervention is filed against the youth or if the youth fails to fulfill the expressed terms and conditions of the consent decree, the petition under which the youth was continued under supervision may be reinstated in the discretion of the county attorney in consultation with probation services. In the event of reinstatement, the proceeding on the petition must be continued to conclusion as if the consent decree had never been entered.

(5) A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition may not again be proceeded against in any court for the same offense alleged in the petition, and the original petition must be dismissed with prejudice. This subsection does not preclude a civil suit against the youth for damages arising from the youth's conduct.

(6) If the terms of the consent decree extend for a period in excess of 6 months, the probation officer shall at the end of each 6-month period submit a report that must be reviewed by the court.

(7) A consent decree with petition under this section may not be used to dispose of a youth's alleged second or subsequent offense if that offense would be a felony if committed by an adult or third or subsequent offense if that offense would be a misdemeanor if committed by an adult unless it is recommended by the county attorney and accepted by the youth court judge.

History: En. 10-1224 by Sec. 24, Ch. 329, L. 1974; amd. Sec. 8, Ch. 100, L. 1977; R.C.M. 1947, 10-1224; amd. Sec. 5, Ch. 696, L. 1991; amd. Sec. 42, Ch. 550, L. 1997; Sec. 41-5-524, MCA 1995; redes. 41-5-1501 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 2, Ch. 523, L. 1999; amd. Sec. 10, Ch. 532, L. 1999.

41-5-1502. Adjudicatory hearing. (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth or the youth's parent, guardian, or attorney may demand a jury trial on the contested offenses. In the absence of a demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearing must be set immediately and accorded a preferential priority.

(2) An adjudicatory hearing must be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in need of intervention. If the hearing is before a jury, the jury's function is to determine whether the youth committed the contested offenses. If the hearing is before the youth court judge without a jury, the judge shall make and record findings on all issues. If the allegations of the petitions are not established at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

(3) Prior to an adjudicatory hearing before a jury, the court shall conduct an omnibus hearing in accordance with 46-13-110.

(4) The jury trial must be conducted in accordance with Title 46, chapter 16.

(5) An adjudicatory hearing must be recorded verbatim by whatever means the court considers appropriate.

(6) The youth charged in a petition must be present at the hearing and, if brought from detention to the hearing, may not appear clothed in institutional clothing.

(7) In a hearing on a petition under this section, the general public may not be excluded, except that in the court's discretion, the general public may be excluded if the petition alleges that the youth is in need of intervention.

(8) If, on the basis of a valid admission by a youth of the allegations of the petition or after the hearing required by this section, a youth is found to be a delinquent youth or a youth in need of intervention, the court shall schedule a dispositional hearing under this chapter.

(9) When a jury trial is required in a case, it may be held before a jury selected as provided in Title 25, chapter 7, part 2, and in Rule 47, M.R.Civ.P.

History: En. 10-1220 by Sec. 20, Ch. 329, L. 1974; amd. Sec. 7, Ch. 100, L. 1977; amd. Sec. 1, Ch. 344, L. 1977; R.C.M. 1947, 10-1220; amd. Sec. 1, Ch. 668, L. 1979; amd. Sec. 1, Ch. 469, L. 1981; amd. Sec. 3, Ch. 466, L. 1995; amd. Sec. 26, Ch. 286, L. 1997; amd. Secs. 30, 76, Ch. 550, L. 1997; Sec. 41-5-521, MCA 1995; redes. 41-5-1502 by Sec. 47, Ch. 286, L. 1997.

41-5-1503. Medical or psychological evaluation of youth — urinalysis. (1) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-331. Except as provided in subsection (2), the youth court shall pay for the cost of the evaluation from its judicial district's allocation provided for in 41-5-130 or 41-5-2012.

(2) The youth court shall determine the financial ability of the youth's parents or guardians to pay the cost of an evaluation ordered by the court under subsection (1). If they are financially able, the court shall order the youth's parents or guardians to pay all or part of the cost of the evaluation.

(3) Subject to 41-5-1512(1)(o)(i), the youth court may not order an evaluation or placement of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is listed in 41-5-206.

(4) An evaluation of a youth may not be performed at the Montana state hospital.

(5) In a proceeding alleging a youth to be a delinquent youth, upon a finding of an offense related to use of alcohol or illegal drugs, the court may order the youth to undergo urinalysis for the purpose of determining whether the youth is using alcoholic beverages or illegal drugs.

History: En. Sec. 39, Ch. 550, L. 1997; amd. Sec. 11, Ch. 532, L. 1999; amd. Sec. 7, Ch. 587, L. 2001; amd. Sec. 9, Ch. 398, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 398 in (1) substituted second sentence concerning youth court payment for evaluation for former second and third sentences that read: "The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (2). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court"; in (4) at end deleted "unless the youth is transferred to the district court under 41-5-208 or 41-5-1605 or the jurisdiction of the youth court is terminated following the filing of an information in district court pursuant to 41-5-206"; and made minor changes in style. Amendment effective June 30, 2007.

41-5-1504. Finding of suffering from mental disorder and meeting other criteria — rights — limitation on placement. (1) A youth who is found to be suffering from a mental disorder, as defined in 53-21-102, and who meets the criteria in 53-21-126(1) is entitled to all rights provided by 53-21-114 through 53-21-119.

(2) A youth who, prior to placement or sentencing, is found to be suffering from a mental disorder, as defined in 53-21-102, and who meets the criteria in 53-21-126(1) may not be committed or sentenced to a state youth correctional facility.

(3) A youth who is found to be suffering from a mental disorder, as defined in 53-21-102, and who meets the criteria in 53-21-126(1) after placement in or sentencing to a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

History: En. Secs. 36, 78(1)(c), Ch. 550, L. 1997.

41-5-1505 through 41-5-1510 reserved.

41-5-1511. Dispositional hearing — contributions by parents or guardians for expenses. (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of intervention, the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of the financial ability of the youth's parents or guardians to pay a contribution for the cost of the adjudication, disposition, supervision, care, commitment, and treatment of the youth as required in 41-5-1525, including the costs of necessary medical, dental, and other health care.

(2) Before conducting the dispositional hearing, the court shall direct that a youth assessment or predisposition report be made in writing by a probation officer or an assessment officer concerning the youth, the youth's family, the youth's environment, and other matters relevant to the need for care or rehabilitation or disposition of the case, including a statement by the victim or the victim's family. The youth court may have the youth examined, and the results of the examination must be made available to the court as part of the youth assessment or predisposition report. The court may order the examination of a parent or guardian whose ability to care for or supervise a youth is at issue before the court. The results of the examination must be included in the youth assessment or predisposition report. The youth or the youth's parents, guardian, or counsel has the right to subpoena all persons who have prepared any portion of the youth assessment or predisposition report and has the right to cross-examine the parties at the dispositional hearing.

(3) Defense counsel must be furnished with a copy of the youth assessment or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing must be conducted in the manner set forth in 41-5-1502(5) through (7). The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth, the victim, and the public. The evidence must include but is not limited to the youth assessment and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, the youth's parents or guardian, or the public may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

History: En. 10-1221 by Sec. 21, Ch. 329, L. 1974; R.C.M. 1947, 10-1221; amd. Sec. 4, Ch. 246, L. 1979; amd. Sec. 9, Ch. 567, L. 1979; amd. Sec. 5, Ch. 484, L. 1981; amd. Sec. 31, Ch. 465, L. 1983; amd. Sec. 10, Ch. 515, L. 1987; amd. Sec. 61, Ch. 609, L. 1987; amd. Sec. 10, Ch. 696, L. 1991; amd. Sec. 8, Ch. 528, L. 1995; amd. Sec. 27, Ch. 286, L. 1997; amd. Sec. 31, Ch. 550, L. 1997; Sec. 41-5-522, MCA 1995; red. 41-5-1511 by Sec. 47, Ch. 286, L. 1997.

41-5-1512. Disposition of youth in need of intervention or youth who violate consent adjustments. (1) If a youth is found to be a youth in need of intervention or to have violated a consent adjustment, the youth court may enter its judgment making one or more of the following dispositions:

(a) place the youth on probation. The youth court shall retain jurisdiction in a disposition under this subsection.

(b) place the youth in a residence that ensures that the youth is accountable, that provides for rehabilitation, and that protects the public. Before placement, the sentencing judge shall seek and consider placement recommendations from the youth placement committee.

(c) commit the youth to the youth court for the purposes of placement in a private, out-of-home facility subject to the conditions in 41-5-1522. In an order committing a youth to the youth court, the court shall determine whether continuation in the youth's own home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home.

(d) order restitution for damages that result from the offense for which the youth is disposed by the youth or by the person who contributed to the delinquency of the youth;

(e) require the performance of community service;

(f) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

(i) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community;

(j) subject to the provisions of 41-5-1504, commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is found to be suffering from a mental disorder, as defined in 53-21-102, and meets the criteria in 53-21-126(1);

(k) place the youth under home arrest as provided in Title 46, chapter 18, part 10;

(l) order confiscation of the youth's driver's license, if the youth has one, by the probation officer for a specified period of time, not to exceed 90 days. The probation officer shall notify the department of justice of the confiscation and its duration. The department of justice may not enter the confiscation on the youth's driving record. The probation officer shall notify the department of justice when the confiscated driver's license has been returned to the youth. A youth's driver's license may be confiscated under this subsection more than once. The probation officer may, in the probation officer's discretion and with the concurrence of a parent or guardian, return a youth's confiscated driver's license before the termination of the time period for which it had been confiscated. The confiscation may not be used by an insurer as a factor in determining the premium or part of a premium to be paid for motor vehicle insurance covering the youth or a vehicle or vehicles driven by the youth and may not be used as grounds for denying coverage for an accident or other occurrence under an existing policy.

(m) order the youth to pay a contribution covering all or a part of the costs for adjudication, disposition, and attorney fees for the costs of prosecuting or defending the youth and costs of detention, supervision, care, custody, and treatment of the youth, including the costs of counseling;

(n) order the youth to pay a contribution covering all or a part of the costs of a victim's counseling;

(o) defer imposition of sentence for up to 45 days for a placement evaluation at a suitable program or facility with the following conditions:

(i) The court may not order placement for evaluation at a youth correctional facility of a youth who has committed an offense that would not be a criminal offense if committed by an adult or a youth who has violated a consent adjustment.

(ii) The placement for evaluation must be on a space-available basis. Except as provided in subsection (1)(o)(iii), the court shall pay the cost of the placement for evaluation from its judicial district's allocation provided for in 41-5-130 or 41-5-2012.

(iii) The court may require the youth's parents or guardians to pay a contribution covering all or a part of the costs of the evaluation if the court determines after an examination of financial ability that the parents or guardians are able to pay the contribution. Any remaining unpaid costs of evaluation are the financial responsibility of the judicial district of the court that ordered the evaluation.

(p) order placement of a youth in a youth assessment center for up to 10 days;

(q) order the youth to participate in mediation that is appropriate for the offense committed.

(2) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may not order a local government entity to pay for evaluation and in-state transportation of a youth.

(3) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the annual allocation established for that district under 41-5-130 without approval from the cost containment review panel.

History: En. 10-1222 by Sec. 22, Ch. 329, L. 1974; amd. Sec. 10, Ch. 571, L. 1977; R.C.M. 1947, 10-1222; amd. Sec. 2, Ch. 29, L. 1979; amd. Sec. 5, Ch. 246, L. 1979; amd. Sec. 2, Ch. 129, L. 1983; amd. Sec. 2, Ch. 233, L. 1983; amd. Sec. 27, Ch. 361, L. 1983; amd. Sec. 8, Ch. 363, L. 1983; amd. Sec. 5, Ch. 465, L. 1983; amd. Sec. 6, Ch. 531, L. 1985; amd. Sec. 1, Ch. 612, L. 1985; amd. Sec. 8, Ch. 14, Sp. L. June 1986; amd. Sec. 101, Ch. 370, L. 1987; amd. Sec. 11, Ch. 515, L. 1987; amd. Sec. 62, Ch. 609, L. 1987; amd. Sec. 1, Ch. 172, L. 1989; amd. Sec. 1, Ch. 210, L. 1989; amd. Sec. 7, Ch. 434, L. 1989; amd. Sec. 5, Ch. 616, L. 1989; amd. Sec. 9, Ch. 105, L. 1991; amd. Sec. 1, Ch. 201, L. 1991; amd. Sec. 1, Ch. 511, L. 1991; amd. Sec. 4, Ch. 696, L. 1991; amd. Sec. 1, Ch. 358, L. 1993; amd. Sec.

8, Ch. 438, L. 1995; amd. Sec. 195, Ch. 546, L. 1995; amd. Sec. 3, Ch. 185, L. 1997; amd. Sec. 1, Ch. 375, L. 1997; amd. Secs. 33, 78(1)(b), Ch. 550, L. 1997; Sec. 41-5-523, MCA 1995; reded. 41-5-1512 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 8, Ch. 587, L. 2001; amd. Sec. 10, Ch. 398, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 398 in (1)(c) in first sentence substituted "youth court for the purposes of placement in a private, out-of-home facility" for "department in jurisdictions that do not participate in the juvenile delinquency intervention program or to the youth court in jurisdictions that participate in the juvenile delinquency intervention program for the purposes of funding a private, out-of-home, residential placement" and in second sentence before "the youth court" deleted "the department or to"; in (1)(o)(ii) at end of first sentence deleted "at the county's expense, which is not reimbursable under part 19 of this chapter" and inserted second sentence concerning court payment from its allocation; in (2) in second sentence after "may" inserted "not"; in (3) near middle substituted "annual allocation" for "account"; and made minor changes in style. Amendment effective June 30, 2007.

41-5-1513. Disposition — delinquent youth — restrictions. (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

- (a) any one or more of the dispositions provided in 41-5-1512;
 - (b) subject to 41-5-1504, 41-5-1512(1)(o)(i), and 41-5-1522, commit the youth to the department for placement in a state youth correctional facility and recommend to the department that the youth not be released until the youth reaches 18 years of age. The provisions of 41-5-355 relating to alternative placements apply to placements under this subsection (1)(b). The court may not place a youth adjudicated to be a delinquent youth in a state youth correctional facility for an act that would be a misdemeanor if committed by an adult unless:
 - (i) the youth committed four or more misdemeanors in the prior 12 months;
 - (ii) a psychiatrist or a psychologist licensed by the state or a licensed clinical professional counselor or a licensed clinical social worker has evaluated the youth and recommends placement in a state youth correctional facility; and
 - (iii) the court finds that the youth will present a danger to the public if the youth is not placed in a state youth correctional facility.
 - (c) subject to the provisions of subsection (5), require a youth found to be a delinquent youth, as the result of the commission of an offense that would be a violent offense, as defined in 46-23-502, if committed by an adult, to register and remain registered as a violent offender pursuant to Title 46, chapter 23, part 5. The youth court shall retain jurisdiction in a disposition under this subsection to ensure registration compliance.
 - (d) in the case of a delinquent youth who has been adjudicated for a sexual offense, as defined in 46-23-502, and is required to register as a sexual offender pursuant to Title 46, chapter 23, part 5, exempt the youth from the duty to register if the court finds that:
 - (i) the youth has not previously been found to have committed or been adjudicated for a sexual offense, as defined in 46-23-502; and
 - (ii) registration is not necessary for protection of the public and that relief from registration is in the public's best interest;
 - (e) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release or an alternative placement.
 - (f) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult.
- (2) If a youth has been adjudicated for a sexual offense, as defined in 46-23-502, the youth court shall:
- (a) prior to disposition, order a psychosexual evaluation that must comply with the provisions of 46-18-111;
 - (b) designate the youth's risk level pursuant to 46-23-509; and
 - (c) require completion of sexual offender treatment.

(3) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may not order a local government entity to pay for evaluation and in-state transportation of a youth, except as provided in 52-5-109.

(4) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the annual allocation established for that district under 41-5-130 without approval from the cost containment review panel.

(5) The duration of registration for a youth who is required to register as a sexual or violent offender must be as provided in 46-23-506, except that the court may, based on specific findings of fact, order a lesser duration of registration.

History: En. Sec. 34, Ch. 550, L. 1997; amd. Sec. 12, Ch. 532, L. 1999; amd. Sec. 9, Ch. 587, L. 2001; amd. Sec. 1, Ch. 157, L. 2003; amd. Sec. 11, Ch. 398, L. 2007; amd. Sec. 3, Ch. 483, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 398 in (3) in second sentence near beginning after “may” inserted “not” and at end inserted exception clause; in (4) near middle substituted “annual allocation” for “account”; and made minor changes in style. Amendment effective June 30, 2007.

Chapter 483 in (1)(c) at beginning of first sentence inserted “subject to the provisions of subsection (5)”, after “would be a” deleted “sexual offense or”, after “register” inserted “and remain registered”, and after “as a” deleted “sexual or” and in second sentence at end inserted “to ensure registration compliance”; inserted (1)(d) allowing a delinquent youth adjudicated for a sexual offense to be exempt from registration under certain circumstances; in (2) in introductory clause after “adjudicated for a” substituted “sexual offense, as defined in 46-23-502” for “sex offense” and after “court” substituted “shall” for “may”; inserted (2)(a) requiring the court to order a psychosexual evaluation prior to disposition; inserted (2)(b) requiring the court to designate the youth’s risk level; in (2)(c) after “treatment” deleted “before a youth is discharged”; inserted (5) establishing the duration of registration for a youth; and made minor changes in style. Amendment effective May 11, 2007.

Retroactive Applicability: Section 31, Ch. 483, L. 2007, provided: “[Sections 2, 3, and 19 through 24] [amending 41-5-216, 41-5-1513, 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, and 46-23-509] apply retroactively, within the meaning of 1-2-109, to:

(1) sexual offenders who are sentenced or who are in the custody or under the supervision of the department of corrections on or after July 1, 1989; and

(2) violent offenders who are sentenced or who are in the custody or under the supervision of the department of corrections on or after October 1, 1995.”

41-5-1514 through 41-5-1520 reserved.

41-5-1521. Restitution. (1) In determining whether restitution, as authorized by 41-5-1304, 41-5-1512, or 41-5-1513, is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

- (a) the age of the youth;
- (b) the ability of the youth to pay;
- (c) the ability of the parents, guardian, or those that contributed to the youth’s delinquency or need for intervention to pay;
- (d) the amount of damage to the victim; and
- (e) legal remedies of the victim. However, the ability of the victim or the victim’s insurer to stand any loss may not be considered.

(2) Restitution paid by a youth is subject to subrogation as provided in 46-18-248.

History: En. Sec. 32, Ch. 550, L. 1997; amd. Sec. 76, Ch. 550, L. 1997.

41-5-1522. Commitment to department — restrictions on placement. When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made by the youth placement committee. Placement is subject to the following limitations:

(1) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the power of the department to enter into a parole agreement with the youth pursuant to 52-5-126.

(2) A youth may not be placed in or transferred to a state adult correctional facility or other facility used for the execution of sentences of adults convicted of crimes.

(3) The department may not place a youth in need of intervention, a youth adjudicated delinquent for commission of an act that would not be an offense if committed by an adult, or a youth who violates a consent adjustment in a state youth correctional facility.

History: En. Sec. 35, Ch. 550, L. 1997; amd. Sec. 12, Ch. 398, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 398 in introductory clause in first sentence near end after “made” deleted “under 41-5-123”. Amendment effective June 30, 2007.

41-5-1523. Commitment to department or youth court — supervision. (1) A youth placed in a state youth correctional facility or other facility or program operated by the department or who signs a parole agreement under 52-5-126 must be supervised by the department.

(2) A youth placed in any private, out-of-home facility by the youth court must be supervised by a juvenile probation officer of the youth court.

(3) Responsibilities of the juvenile probation officer relating to placement of the youth include but are not limited to:

(a) submitting information and documentation necessary for the committee that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which the youth may be placed; and

(d) managing the youth's case while in a private, out-of-home facility and upon release until supervision is terminated by the youth court.

History: En. Sec. 37, Ch. 550, L. 1997; amd. Sec. 13, Ch. 398, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 398 in (2) near beginning substituted “facility” for “residential placement”, after “court” deleted “or the youth court's juvenile probation officer”, before “probation officer” inserted “juvenile”, and at end deleted “having jurisdiction over the youth under 41-5-205, whether or not the youth is committed to the department for purposes of funding a private, out-of-home, residential placement”; in (3) at beginning substituted “Responsibilities of the juvenile probation officer relating to placement of the youth include but are” for “Supervision by the youth probation officer includes but is”; in (3)(a) substituted “committee” for “person, committee, or team”; in (3)(d) near middle substituted “facility” for “residential placement” and at end substituted “supervision is terminated by the youth court” for “discharged by the department”; and made minor changes in style. Amendment effective June 30, 2007.

41-5-1524. Commitment to department — transfer of records. (1) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of formal and informal youth court records, including medical reports, social history material, youth assessment material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(2) The youth court may share informal youth court records with the department when a youth has been committed to the department of corrections for custody. On the youth's 18th birthday or upon discharge, whichever is earlier, the department shall seal the entire record and is subject to 41-5-216(5).

(3) The department shall maintain the records of a youth committed to the department in a separate management information system and may not include any youth records in an adult offender management information system unless the youth has been adjudicated under 41-5-206.

History: En. Sec. 38, Ch. 550, L. 1997; amd. Sec. 6, Ch. 423, L. 2005.

41-5-1525. Contribution for costs — order for contribution — exceptions — collection. (1) If a youth is placed in substitute care, a youth assessment center, or detention requiring payment by any state or local government agency or committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(2) If the court determines that a youth's parents or guardians are financially able to pay a contribution for adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, or supervision as provided in subsection (1), the court shall order the youth's parents or guardians to pay a specified amount. The order must state to which state or local government agency all or a part of the contribution is due and in what order the payments must be made.

(3) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (1), the court shall order the youth's parents or guardians to pay an amount attributable to care, custody, and treatment based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(4) (a) Except as provided in subsection (4)(b), contributions ordered under subsection (3) and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and must be included in the order. An exception from the immediate income-withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the youth; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(5) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (3).

(6) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

History: En. Sec. 41, Ch. 550, L. 1997.

Part 16

Extended Jurisdiction Prosecution Act

41-5-1601. Short title. This part may be cited as the "Extended Jurisdiction Prosecution Act".

History: En. Sec. 1, Ch. 438, L. 1995; Sec. 41-5-1101, MCA 1995; redes. 41-5-1601 by Sec. 47, Ch. 286, L. 1997.

41-5-1602. Extended jurisdiction juvenile prosecution — designation. (1) A youth court case involving a youth alleged to have committed an offense that would be a felony if committed by an adult, except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed, is an extended jurisdiction juvenile prosecution if:

(a) the youth was at least 14 years of age at the time of the alleged offense, the county attorney requests that the case be designated an extended jurisdiction juvenile prosecution, a hearing is held under 41-5-1603, and the court designates the case as an extended jurisdiction juvenile prosecution;

(b) the county attorney designates in the delinquency petition that the proceeding is an extended jurisdiction juvenile prosecution and the youth is alleged to have committed:

(i) an offense that is listed under 41-5-206, except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed; or

(ii) any offense that would be a felony if committed by an adult, except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed, in which the youth allegedly used a firearm, if the youth was at least 12 years of age at the time of the alleged offense; or

(c) after a hearing upon a motion for transfer of the matter of prosecution to the district court under 41-5-206, the court designates the case as an extended jurisdiction juvenile prosecution.

(2) To enforce the court's disposition in an extended jurisdiction juvenile prosecution, the court shall retain jurisdiction as provided in 41-5-205.

History: En. Sec. 2, Ch. 438, L. 1995; amd. Sec. 6, Ch. 498, L. 1997; Sec. 41-5-1102, MCA 1995; redes. 41-5-1602 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 4, Ch. 537, L. 1999.

41-5-1603. Hearing on request. (1) When a county attorney requests that a case be designated as an extended jurisdiction juvenile prosecution under 41-5-1602(1)(a), the court shall hold a hearing to consider the request.

(2) The hearing must be held within 30 days of the filing of the request unless good cause is shown by the county attorney or the youth that the hearing should be held later, in which case the hearing must be held within 90 days of the request.

(3) If the county attorney shows by clear and convincing evidence that designating the case as an extended jurisdiction juvenile prosecution serves public safety, the court may, within 15 days after the hearing, designate the case as an extended jurisdiction juvenile prosecution. In determining whether public safety is served, the court shall consider the factors enumerated in 41-5-1606.

History: En. Sec. 3, Ch. 438, L. 1995; amd. Sec. 7, Ch. 498, L. 1997; Sec. 41-5-1103, MCA 1995; redes. 41-5-1603 by Sec. 47, Ch. 286, L. 1997.

41-5-1604. Disposition in extended jurisdiction juvenile prosecutions. (1) (a) After designation as an extended jurisdiction juvenile prosecution, the case must proceed with an adjudicatory hearing, as provided in 41-5-1502. If a youth in an extended jurisdiction juvenile prosecution admits to or is adjudicated to have committed an offense that would be a felony if committed by an adult, except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed, the court shall, subject to subsection (1)(b), impose a single judgment consisting of:

(i) one or more juvenile dispositions under 41-5-1512 or 41-5-1513; and

(ii) any sentence allowed by the statute that establishes the penalty for the offense of which the youth is convicted and that would be permissible if the offender were an adult. The execution of the sentence imposed under this subsection must be stayed on the condition that the youth not violate the provisions of the disposition order and not commit a new offense.

(b) The combined period of time of a juvenile disposition under subsection (1)(a)(i) plus an adult sentence under subsection (1)(a)(ii) may not exceed the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. This subsection does not limit the power of the department to enter into a parole agreement with the youth pursuant to 52-5-126.

(2) If a youth prosecuted as an extended jurisdiction juvenile after designation by the county attorney in the delinquency petition under 41-5-1602(1)(b) admits to or is adjudicated to have committed an offense that would be a felony if committed by an adult that is not an offense described in 41-5-1602(1)(b), except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed, the court shall adjudicate the youth delinquent and order a disposition under 41-5-1513.

(3) If a youth in an extended jurisdiction juvenile prosecution admits to or is adjudicated to have committed an offense that would not be a felony if committed by an adult, the court shall impose a disposition as provided under subsection (1)(a).

History: En. Sec. 4, Ch. 438, L. 1995; amd. Sec. 8, Ch. 498, L. 1997; Sec. 52, Ch. 550, L. 1997; Sec. 41-5-1104, MCA 1995; redes. 41-5-1604 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 5, Ch. 537, L. 1999.

41-5-1605. Revocation of stay — disposition. (1) If a court has imposed on a youth a sentence stayed under 41-5-1604(1)(a)(ii) and the youth violates the conditions of the stay or is alleged to have committed a new offense, the court may, without notice, direct that the youth be taken into immediate custody. The court shall notify the youth, the youth's counsel, and the youth's parents, guardian, or custodian in writing of the reasons alleged to exist for revocation of the stay of execution of the sentence.

(2) (a) The court shall hold a revocation hearing at which the youth is entitled to receive:

- (i) written notice of the alleged violation;
- (ii) evidence of the alleged violation;
- (iii) an opportunity to be heard in person and to present witnesses and evidence;
- (iv) the right to cross-examine witnesses, unless the court finds good cause for not allowing confrontation; and
- (v) the right to counsel.

(b) After the revocation hearing, if the court finds by a preponderance of the evidence presented that the conditions of the stay have been violated or that the youth has committed a new offense, the court shall provide the youth with a written statement of the evidence relied on and reasons for revocation and shall:

- (i) continue the stay and place the youth on probation;
- (ii) impose one or more dispositions under 41-5-1512 or 41-5-1513 if the youth is under 18 years of age; or
- (iii) subject to 41-5-206(6) and (7) and 41-5-1604(1)(b), order execution of the sentence imposed under 41-5-1604(1)(a)(ii). The court shall order credit for any time served prior to revocation under a disposition under 41-5-1604(1)(a)(i).

(3) Upon revocation and disposition under subsection (2)(b)(iii), the youth court shall transfer the case to the district court. Upon transfer, the offender's extended jurisdiction juvenile status is terminated and youth court jurisdiction is terminated. Ongoing supervision of the offender is with the department, rather than the youth court's juvenile probation services.

History: En. Sec. 5, Ch. 438, L. 1995; amd. Secs. 9, 13, Ch. 498, L. 1997; amd. Sec. 53, Ch. 550, L. 1997; Sec. 41-5-1105, MCA 1995; redes. 41-5-1605 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 6, Ch. 537, L. 1999.

41-5-1606. Public safety. (1) In determining whether the public safety is served by designating a case an extended jurisdiction juvenile prosecution, the court shall consider the following factors:

- (a) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors, the use of a firearm, and the impact on the victim;
- (b) the culpability of the youth in committing the alleged offense, including the level of the youth's participation in planning and carrying out the offense and the existence of mitigating factors;
- (c) the youth's prior record of delinquency;
- (d) the youth's treatment history, including the youth's past willingness to participate meaningfully in available treatment;
- (e) the adequacy of the dispositions available in the juvenile justice system; and
- (f) the dispositional options available for the youth.

(2) In considering the factors listed in subsection (1), the court shall give greater weight to the seriousness of the alleged offense and the youth's prior record of delinquency than to the other listed factors.

History: En. Sec. 10, Ch. 498, L. 1997.

41-5-1607. Proceedings — rights. A youth who is the subject of an extended jurisdiction juvenile prosecution has the right to a trial by jury and to the effective assistance of counsel, as provided in 41-5-1413.

History: En. Sec. 11, Ch. 498, L. 1997.

Part 17

Probation Officers

41-5-1701. Employment of juvenile probation officers and youth court staff. All probation officers and youth court staff are employees of the judicial branch of state government.

The employees are subject to classification and compensation as determined by the judicial branch personnel plan adopted by the supreme court under 3-1-130 and must receive state employee benefits and expenses as provided in Title 2, chapter 18.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(1); amd. Sec. 3, Ch. 29, L. 1979; Sec. 41-5-701, MCA 1995; redes. 41-5-1701 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 34, Ch. 585, L. 2001; amd. Sec. 6, Ch. 152, L. 2003.

41-5-1702. Repealed. Sec. 10, Ch. 152, L. 2003.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(2); amd. Sec. 1, Ch. 544, L. 1987; amd. Sec. 2, Ch. 205, L. 1995; Sec. 41-5-702, MCA 1995; redes. 41-5-1702 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 35, Ch. 585, L. 2001.

41-5-1703. Powers and duties of probation officers. (1) A probation officer shall:

(a) perform the duties set out in 41-5-1302;
 (b) make predisposition studies and submit reports and recommendations to the court;
 (c) supervise, assist, and counsel youth placed on probation or under the probation officer's supervision, including enforcement of the terms of probation or intervention;

(d) assist any public and private community and work projects engaged in by youth to pay fines, make restitution, and pay any other costs ordered by the court that are associated with youth delinquency or need for intervention;

(e) perform any other functions designated by the court.

(2) A probation officer does not have power to make arrests or to perform any other law enforcement functions in carrying out the probation officer's duties except that a probation officer may take into custody any youth who violates either the youth's probation or a lawful order of the court.

(3) The duties of a full-time or part-time probation officer may not be performed by a person serving as a law enforcement officer.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(4), (5); amd. Secs. 48, 76, Ch. 550, L. 1997; Sec. 41-5-703, MCA 1995; redes. 41-5-1703 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 7, Ch. 152, L. 2003.

41-5-1704. Repealed. Secs. 52(1), 63(3), Ch. 585, L. 2001.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(part); amd. Sec. 1, Ch. 605, L. 1979; amd. Sec. 1, Ch. 534, L. 1981; amd. Sec. 1, Ch. 332, L. 1983; amd. Sec. 2, Ch. 580, L. 1985; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 1, Ch. 381, L. 1997; Sec. 41-5-704, MCA 1995; redes. 41-5-1704 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 7, Ch. 507, L. 2001.

41-5-1705. Repealed. Secs. 52(1), 63(3), Ch. 585, L. 2001.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(part); amd. Sec. 2, Ch. 605, L. 1979; amd. Sec. 2, Ch. 332, L. 1983; amd. Sec. 2, Ch. 381, L. 1997; Sec. 41-5-705, MCA 1995; redes. 41-5-1705 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 8, Ch. 507, L. 2001.

41-5-1706. Juvenile probation officer training. (1) The office of court administrator may conduct a 40-hour juvenile probation officer basic training program and other training programs and courses for juvenile probation officers.

(2) A juvenile probation officer who successfully completes the 40-hour basic training program or another program or course must be issued a certificate by the office of court administrator.

(3) Each chief probation officer and deputy probation officer shall obtain 16 hours a year of training in subjects relating to the powers and duties of probation officers.

History: En. Sec. 1, Ch. 205, L. 1995; Sec. 41-5-706, MCA 1995; redes. 41-5-1706 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 36, Ch. 585, L. 2001; amd. Sec. 8, Ch. 152, L. 2003; amd. Sec. 15, Ch. 506, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 506 in (1) at beginning substituted "office of court administrator" for "department of justice" and deleted former second and third sentences that read: "A 40-hour juvenile probation officer basic training program and other training programs and courses for juvenile probation officers may be offered by another public agency or by a private entity if the program or course is approved by the board of crime control. If funding is available, the department shall conduct a 40-hour basic training program once a year"; in (2) at end substituted "office of court administrator" for "board"; in (3) at end after "officers" deleted "in a program or course conducted by the department of justice or approved by the board of crime control"; and deleted former (4) that read: "(4) The board may adopt rules to implement this section." Amendment effective July 1, 2007.

41-5-1707. Assessment officers — duties — access to records. (1) An assessment officer employed by the state judicial branch shall perform the duties set out in 41-5-1201 and 41-5-1302.

(2) Proceedings under 41-5-1201 and 41-5-1302 that are held prior to adjudication satisfy the requirements of 20 U.S.C. 1232g(b)(1)(E)(ii)(I) of the Family Educational Rights and Privacy Act of 1974. Montana school districts may release education records to assessment officers. The assessment officer is responsible for ensuring that officials and authorities to whom that information is disclosed certify in writing to the school district that is releasing the education records that the education records or information from the education records will not be disclosed to any other party without the prior written consent of the parent of the student.

History: En. Sec. 72, Ch. 550, L. 1997; amd. Sec. 37, Ch. 585, L. 2001; amd. Sec. 9, Ch. 152, L. 2003.

Part 18 Custodial Care

41-5-1801. Shelter care facilities. (1) Counties, cities, or nonprofit corporations may provide by purchase, lease, or otherwise, a shelter care facility.

(2) A shelter care facility must be physically separated from any facility housing adults accused or convicted of criminal offenses.

(3) State appropriations and federal funds may be received by counties, cities, or nonprofit corporations for establishment, maintenance, or operation of a shelter care facility.

(4) A shelter care facility must be furnished in a comfortable manner.

(5) A shelter care facility may be operated in conjunction with a youth detention facility.

(6) A shelter care facility may permit a school district to use the facility as an alternative education site provided that the school district provides the educational program and personnel necessary to instruct the youth. Public schools shall follow the requirements of the federal Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq., in making education placement decisions for youth with disabilities.

History: En. Sec. 26, Ch. 227, L. 1943; Sec. 10-627, R.C.M. 1947; amd. and redes. 10-1237 by Sec. 37, Ch. 329, L. 1974; amd. Sec. 13, Ch. 571, L. 1977; R.C.M. 1947, 10-1237; amd. Sec. 11, Ch. 475, L. 1987; amd. Sec. 8, Ch. 434, L. 1989; amd. Sec. 23, Ch. 799, L. 1991; amd. Sec. 10, Ch. 528, L. 1995; amd. Sec. 49, Ch. 550, L. 1997; Sec. 41-5-802, MCA 1995; redes. 41-5-1801 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 7, Ch. 114, L. 2001; amd. Sec. 1, Ch. 61, L. 2003.

41-5-1802. Rules. The department shall adopt rules governing licensing procedures for regional and county detention facilities, including the requirement that a youth detention facility provide an educational program for youth in need of that service.

History: En. Sec. 5, Ch. 475, L. 1987; amd. Sec. 15, Ch. 475, L. 1987; amd. Sec. 10, Ch. 434, L. 1989; amd. Sec. 24, Ch. 799, L. 1991; Sec. 41-5-809, MCA 1995; redes. 41-5-1802 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 3, Ch. 536, L. 1999.

41-5-1803. County responsibility to provide youth detention services. (1) Each county shall provide services for the detention of youth in facilities separate from adult jails. The term “services” includes an educational program for youth in need of that service.

(2) In order to fulfill its responsibility under subsection (1), a county may:

(a) establish, operate, and maintain a holdover, a short-term detention center, or a youth detention facility at county expense;

(b) provide shelter care facilities as authorized in 41-5-1801;

(c) contract with another county for the use of an available shelter care facility, holdover, short-term detention center, or youth detention facility;

(d) establish and operate a network of holdovers in cooperation with other counties;

(e) establish a regional detention facility;

(f) enter into an agreement with a private party under which the private party will own, operate, or lease a shelter care facility or youth detention facility for use by the county. The agreement may be made in substantially the same manner as provided for in 7-32-2232 and 7-32-2233.

(g) contract with another state, political subdivision of another state, or an Indian tribe for use of a secure detention facility. Secure detention facilities contracted with for the purposes of this subsection (2)(g) must be licensed or certified by a state or federal agency with applicable

licensing or certifying authority, or the contracting county shall determine that the out-of-state or tribal detention facility substantially complies with the licensing requirements contained in rules adopted by the department.

(3) Each county or regional detention facility must be licensed by the department in accordance with rules adopted under 41-5-1802.

(4) A county youth detention facility or a regional detention facility may contract with a school district for the provision of an educational program at the facility. The school district may use the facility as an alternative education site for the district. A contract authorized under this subsection must be made pursuant to the Interlocal Cooperation Act, Title 7, chapter 11, part 1, and must specify:

(a) that the school district is responsible for providing for the education of students enrolled in the school district;

(b) that the youth detention facility is responsible for providing for the education of youth held in lawful custody in the facility;

(c) the educational program and personnel necessary to provide instruction at the facility. The district and the detention facility shall follow the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq., in making educational placement decisions for youth with disabilities.

(d) the amount of funding to be contributed by the facility and the school district toward payment of the cost of establishing, operating, and maintaining the educational program.

History: En. Sec. 2, Ch. 799, L. 1991; Sec. 41-5-810, MCA 1995; redes. 41-5-1803 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 13, Ch. 532, L. 1999; amd. Sec. 4, Ch. 536, L. 1999.

41-5-1804. Regional detention facilities. (1) Two or more counties may, by contract, establish and maintain a regional detention facility.

(2) For the purpose of establishing and maintaining a regional detention facility, a county may:

(a) issue general obligation bonds for the acquisition, purchase, construction, renovation, and maintenance of a regional detention facility;

(b) subject to 15-10-420, levy and appropriate taxes, as permitted by law, to pay its share of the cost of equipping, operating, and maintaining the facility; and

(c) exercise all powers, under the limitations prescribed by law, necessary and convenient to carry out the purposes of 41-5-1803 and this section.

(3) Contracts authorized under subsection (1) must be made pursuant to the Interlocal Cooperation Act, Title 7, chapter 11, part 1.

(4) Contracts between counties participating in a regional detention facility must:

(a) specify the responsibilities of each county participating in the agreement;

(b) designate responsibility for operation of the regional detention facility;

(c) specify the amount of funding to be contributed by each county toward payment of the cost of establishing, operating, and maintaining the regional detention facility, including the necessary expenditures for the transportation of youth to and from the facility but excluding the education costs funded by a school district pursuant to 41-5-1807;

(d) include the applicable per diem charge for the detention of youth in the facility, as well as the basis for any adjustment in the charge;

(e) specify the number of beds to be reserved for the use of each county participating in the regional detention facility; and

(f) provide an educational program for youth held in the detention facility and in need of that service.

History: En. Sec. 3, Ch. 799, L. 1991; amd. Sec. 11, Ch. 528, L. 1995; Sec. 41-5-811, MCA 1995; redes. 41-5-1804 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 5, Ch. 536, L. 1999; amd. Sec. 126, Ch. 584, L. 1999.

41-5-1805. Creation of regions — requirements — limitation on number of regions. (1) Counties that wish to establish a regional detention facility shall form a youth detention region.

(2) Each youth detention region must:

(a) be composed of contiguous counties participating in the regional detention facility; and

(b) include geographical areas of the state that contain a substantial percentage of the total youth population in need of detention services, as determined by the board of crime control.

(3) There may be no more than five youth detention regions established in the state at any one time.

History: En. Sec. 4, Ch. 799, L. 1991; Sec. 41-5-812, MCA 1995; redes. 41-5-1805 by Sec. 47, Ch. 286, L. 1997.

41-5-1806. Contracts with nonparticipating counties. Counties participating in a regional detention facility may enter into agreements with nonparticipating counties to provide services for the detention of youth. The costs of services must be based upon a per diem charge for the detention of youth in the facility.

History: En. Sec. 5, Ch. 799, L. 1991; Sec. 41-5-813, MCA 1995; redes. 41-5-1806 by Sec. 47, Ch. 286, L. 1997.

41-5-1807. Responsibility for payment of detention costs. (1) Absent a contract or agreement between counties and except as provided in subsection (2), all costs for the detention of a youth in a county or regional detention facility, including medical costs incurred by the youth during detention, must be paid by the county at whose instance the youth is detained.

(2) A detention facility providing an educational program for youth held in lawful custody at the facility is eligible to receive education funding calculated as follows:

(a) Before the end of each fiscal year, the facility shall compile the following information by school district:

(i) the number of youth detained in the facility over 9 consecutive days during the prior year; and

(ii) the total number of days the youth in subsection (2)(a)(i) were detained.

(b) The facility shall calculate the school district's obligation for educational services by multiplying the number of youth detained and the total number of days detained as provided in subsection (2) by \$20 a day for each youth. The calculation must be sent to the school district no later than June 30. The school district shall transmit the amount calculated to the county treasurer of the county where the facility is located no later than July 15.

(c) The funds are to be used by the county for educational services provided by certified personnel in the detention facility located in the county and is subject to the requirements of Title 7, chapter 6, part 23.

History: En. Sec. 6, Ch. 799, L. 1991; Sec. 41-5-814, MCA 1995; redes. 41-5-1807 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 6, Ch. 536, L. 1999.

41-5-1808. Juvenile detention or juvenile corrections officer training. A juvenile detention or juvenile corrections officer shall, in the first year of employment, complete a basic training course as required in 44-4-403. The training must be done under the auspices of the Montana law enforcement academy but does not have to occur at the academy.

History: En. Sec. 1, Ch. 316, L. 2003; amd. Sec. 17, Ch. 506, L. 2007; Sec. 44-4-305, MCA 2005; redes. 41-5-1808 by Sec. 23(3), Ch. 506, L. 2007.

Part 19

State Grants for Youth Detention Services

41-5-1901. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Attendant care" means the direct supervision of youth by a trained attendant in a physically unrestricting setting.

(2) "Board" means the board of crime control provided for in 2-15-2006.

(3) "County" means a county, city-county consolidated government, or a youth detention region created pursuant to 41-5-1805.

(4) "Home detention" means the use of a youth's home for the purpose of ensuring the continued custody of the youth pending adjudication or final disposition of his case.

(5) "Plan" means a county plan for providing youth detention services as required in 41-5-1903.

(6) "Secure detention" means the detention of youth in a physically restricting facility designed to prevent a youth from departing at will.

(7) "Youth detention service" means service for the detention of youth in facilities separate from adult jails. The term includes the services described in 41-5-1902.

History: En. Sec. 7, Ch. 799, L. 1991; Sec. 41-5-1001, MCA 1995; redes. 41-5-1901 by Sec. 47, Ch. 286, L. 1997.

41-5-1902. State grants to counties. (1) Within the limits of available funds, the board shall provide grants in accordance with 41-5-1903 through 41-5-1905 to assist counties in establishing and operating youth detention services, including but not limited to youth detention facilities, short-term detention centers, holdovers, attendant care, home detention, and programs for the transportation of youth to regional detention facilities.

(2) Grants available under subsection (1) consist of state appropriations and federal funds received by the board for the purpose of administering 41-5-1901 through 41-5-1905.

History: En. Sec. 8, Ch. 799, L. 1991; Sec. 41-5-1002, MCA 1995; redes. 41-5-1902 by Sec. 47, Ch. 286, L. 1997.

41-5-1903. Application for grants — county plans — obligation of counties receiving grants — review and monitoring. (1) In order to receive funds under 41-5-1902, a county shall submit an application to the board in a manner and form prescribed by the board.

(2) The application must include a written plan for providing youth detention services in the county. Each plan must include:

- (a) an assessment of the need for services;
- (b) a description of services to be provided, including alternatives to secure detention;
- (c) the estimated number of youth who will receive services;
- (d) criteria for the placement of youth in secure detention; and
- (e) a budget describing proposed expenditures for youth detention services.

(3) If the application and plan are approved by the board, the county may receive a grant in the amount provided for in 41-5-1904.

(4) As a condition of receiving funds under 41-5-1902, each county shall, within a reasonable period of time, comply or substantially comply with state law and policies contained in the Montana Youth Court Act concerning the detention and placement of youth.

(5) The board shall periodically review and monitor counties receiving grants under 41-5-1902 to assure compliance or substantial compliance with the Montana Youth Court Act, as required under subsection (4). If, after notice and fair hearing, the board determines that a county is not in compliance or substantial compliance with the Montana Youth Court Act, the board shall terminate the grant to the county.

History: En. Sec. 9, Ch. 799, L. 1991; Sec. 41-5-1003, MCA 1995; redes. 41-5-1903 by Sec. 47, Ch. 286, L. 1997.

41-5-1904. Distribution of grants — limitation of funding — restrictions on use. (1) The board shall award grants on an equitable basis, giving preference to services that are to be used on a regional basis.

(2) The board shall award grants to eligible counties:

(a) in a block grant in an amount not to exceed 50% of the approved, estimated cost of secure detention; or

(b) on a matching basis in an amount not to exceed:

(i) 75% of the approved cost of providing holdovers, attendant care, and other alternatives to secure detention, except for shelter care. Shelter care costs must be paid as provided by law.

(ii) 50% of the approved cost of programs for the transportation of youth to appropriate detention or shelter care facilities, including regional detention facilities.

(3) Based on funding available after the board has funded block grants under subsection (2), the board shall, in cases of extreme hardship in which the transfer of youth court cases to the adult system has placed considerable financial strain on a county's resources, award grants to eligible counties to fund up to 75% of the actual costs of secure detention of youth awaiting transfer. Hardship cases will be addressed at the end of the fiscal year and will be awarded by the board based upon a consideration of the applicant county's past 3 years' expenditures for youth detention and upon consideration of the particular case or cases that created the hardship expenditure for which the hardship grant is requested.

(4) Grants under 41-5-1902 may not be used to pay for the cost of youth evaluations. The cost of evaluations must be paid as provided for in 41-5-1503.

History: En. Sec. 10, Ch. 799, L. 1991; amd. Sec. 1, Ch. 8, L. 1995; amd. Sec. 50, Ch. 550, L. 1997; Sec. 41-5-1004, MCA 1995; redes. 41-5-1904 by Sec. 47, Ch. 286, L. 1997.

41-5-1905. Allocation of grants. (1) Each fiscal year, the board shall allocate grants under 41-5-1902 for distribution to eligible counties based upon:

(a) the relative population of youth residing in geographical areas of the state, as determined by the board; and

(b) the estimated cost of youth detention services in each county eligible for funding under 41-5-1902.

(2) A county is not automatically entitled to receive a grant from funds available under 41-5-1902.

History: En. Sec. 11, Ch. 799, L. 1991; Sec. 41-5-1005, MCA 1995; redes. 41-5-1905 by Sec. 47, Ch. 286, L. 1997.

41-5-1906. Amendment of state plan. The board shall amend the state plan required under section 223 of the federal Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5633), to reflect the contents of approved county plans for providing youth detention services.

History: En. Sec. 12, Ch. 799, L. 1991; Sec. 41-5-1006, MCA 1995; redes. 41-5-1906 by Sec. 47, Ch. 286, L. 1997.

41-5-1907. Compliance with federal requirements. The board shall administer federal funds available under section 222 of the federal Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5632), in compliance with the requirements of 42 U.S.C. 5633(a)(21) and 42 U.S.C. 5674.

History: En. Sec. 13, Ch. 799, L. 1991; Sec. 41-5-1007, MCA 1995; redes. 41-5-1907 by Sec. 47, Ch. 286, L. 1997.

41-5-1908. Rulemaking authority. The board may adopt rules necessary to implement the provisions of 41-5-1805 and 41-5-1901 through 41-5-1908 and to establish requirements for approved holdovers consistent with the definition of holdover provided in 41-5-103.

History: En. Sec. 14, Ch. 799, L. 1991; amd. Sec. 192, Ch. 42, L. 1997; amd. Sec. 51, Ch. 550, L. 1997; Sec. 41-5-1008, MCA 1995; redes. 41-5-1908 by Sec. 47, Ch. 286, L. 1997.

Part 20

Juvenile Delinquency Intervention Act

41-5-2001. Short title. This part may be cited as the “Juvenile Delinquency Intervention Act”.

History: En. Sec. 12, Ch. 587, L. 2001.

41-5-2002. Purpose. The purposes of this part are to:

(1) provide an alternate method of funding juvenile out-of-home placements, programs, and services;

(2) increase the ability of youth courts to respond to juvenile delinquency through early intervention and expanded community alternatives;

(3) enhance the ability of youth courts to control costs;

(4) enhance community safety, hold youth accountable, and promote the competency development of youth;

(5) use local resources for the placement of troubled youth, when appropriate and available;

(6) reduce placements in out-of-state residential facilities and programs; and

(7) use state youth correctional facilities when appropriate.

History: En. Sec. 13, Ch. 587, L. 2001; amd. Sec. 14, Ch. 398, L. 2007.

Compiler’s Comments

2007 Amendment: Chapter 398 in (1) substituted “out-of-home placements, programs” for “placement”; in (2) and (3) substituted “youth courts” for “local government”; inserted (4) concerning community safety; inserted (5) concerning local resources; inserted (6) concerning reduction of out-of-state placements; inserted (7) concerning youth correctional facilities; and made minor changes in style. Amendment effective June 30, 2007.

41-5-2003. Establishment of program — department duties — office of court administrator duties. (1) There is a juvenile delinquency intervention program. Each judicial district shall participate in the program.

(2) The department and the judicial district shall monitor the judicial district’s annual allocation provided for in 41-5-130 to ensure that the judicial district does not exceed its allocation.

(3) The department shall provide technical assistance to each judicial district for the monitoring of its annual allocation.

(4) The office of court administrator shall assist each youth court in developing placement alternatives and community intervention and prevention programs and services.

(5) (a) Each fiscal year, the office of court administrator shall select out-of-home placements, programs, and services to be evaluated for their effectiveness in achieving the purposes provided in 41-5-2002. The cost containment review panel shall provide recommendations to the office on out-of-home placements, programs, and services to be evaluated and on the scope of the evaluation. Before conducting any evaluation, the office shall obtain approval from the district court council established in 3-1-1602.

(b) The office shall report the results of any evaluation conducted under subsection (5)(a) each year to the department, cost containment review panel, district court council, and law and justice interim committee.

History: En. Sec. 14, Ch. 587, L. 2001; amd. Sec. 15, Ch. 398, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 398 in (1) substituted second sentence requiring participation for former (1)(b) that read: "(b) Participation in the juvenile delinquency intervention program is voluntary"; substituted (2) concerning monitoring judicial district's annual allocation for former text that read: "The department and the youth court shall monitor the youth court's account created under 41-5-130 to ensure that the youth court does not exceed its allocated account budget"; deleted former (3) that read: "(3) Account funds not used by the youth court for placements must be distributed to participating youth courts in accordance with rules adopted by the department to be used for placement alternatives and early intervention alternatives"; in (3) substituted "judicial district" for "youth court" and at end substituted "its annual allocation" for "account funds and the evaluation and development of placement alternatives and effective intervention programming"; substituted (4) concerning court administrator assistance and (5) concerning evaluation of programs and report on results of evaluations for former text that read: "The department shall review and monitor each youth court to enable the development of placement alternatives by the youth courts and the development of early intervention alternatives by the youth courts. The department shall report to the legislature on the results of its monitoring"; and made minor changes in style. Amendment effective June 30, 2007.

41-5-2004. Youth court duties. Each youth court shall:

(1) use available resources to develop alternatives for the placement of youth;

(2) use available resources for early intervention strategies for troubled youth;

(3) use a validated risk assessment instrument approved by the office of court administrator for the measurement of risk and the effectiveness of treatment or intervention services for youth pursuant to 41-5-1512 or 41-5-1513;

(4) submit quarterly reports to the office of court administrator and the department documenting the use of diversion and prevention programs and the use of placement services; and

(5) provide the legislative auditor with access to all records maintained by the youth court.

History: En. Sec. 15, Ch. 587, L. 2001; amd. Sec. 16, Ch. 398, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 398 in (3) at beginning before "risk" inserted "validated", substituted "office of court administrator" for "department", after "risk" deleted "assessment", and near end substituted "services for youth" for "for youth adjudicated"; in (4) after "reports to the" inserted "office of court administrator and the"; deleted former (5) that read: "(5) participate in the cost containment review panel established under 41-5-131"; in (5) after "provide the" deleted "department and the"; and made minor changes in style. Amendment effective June 30, 2007.

41-5-2005. Youth placement committee recommendation to youth court judge — acceptance or rejection. (1) (a) Prior to commitment of a youth to the legal custody of the youth court under 41-5-1512 or 41-5-1513 or to the department under 41-5-1513, a youth placement committee must be convened. Except as provided in subsection (1)(b), the committee shall submit in writing to the youth court judge its primary and alternative recommendations for placement of the youth.

(b) An alternative recommendation is unnecessary if the committee's recommendation is placement in a youth correctional facility.

(2) The committee shall first consider placement of the youth in a community-based facility or program and shall give priority to placement of the youth in a facility or program located in the state of Montana.

(3) If in-state alternatives for placement of the youth are inappropriate, the committee may recommend an out-of-state placement. The committee shall state in its recommendation the reasons why in-state services are not appropriate.

(4) The primary and alternative recommendations of the youth placement committee must be for similar facilities or programs. The youth court may require a youth placement committee to reevaluate a youth if the recommended placements are dissimilar.

(5) If the youth court rejects both of the committee's recommendations, it shall promptly notify the committee in writing of the reasons for rejecting the recommendations and shall make an appropriate placement for the youth.

(6) The youth court may not order a placement or change of placement that results in a deficit in the annual allocation established for that district under 41-5-130 without approval from the cost containment review panel.

(7) The youth court shall evaluate the cost of the placement or change of placement and ensure that the placement or change of placement will not overspend the annual allocation provided by the department under 41-5-130.

History: En. Sec. 16, Ch. 587, L. 2001; amd. Sec. 17, Ch. 398, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 398 in (1)(a) in first sentence before "custody" inserted "legal", after "court" inserted "under 41-5-1512 or 41-5-1513", and after "department" substituted "under 41-5-1513" for "pursuant to 41-5-1512 or 41-5-1513" and in second sentence at beginning inserted exception clause; inserted (1)(b) concerning when alternative recommendation is unnecessary; in (6) near middle substituted "annual allocation" for "account"; in (7) near end substituted "annual allocation" for "budget allocation"; deleted former (8) that read: "(8) This section applies only to those judicial districts that elect to participate in the juvenile delinquency intervention program administered by the department"; and made minor changes in style. Amendment effective June 30, 2007.

41-5-2006. Rulemaking authority — policies and procedures. (1) The department shall adopt rules necessary to perform its duties under this chapter, including but not limited to rules regarding:

- (a) monitoring judicial districts' annual allocations provided for in 41-5-130;
- (b) processing payments for out-of-home placements, programs, and services on behalf of the youth courts;
- (c) determining the amount to be allocated to the cost containment pool as provided for in 41-5-132; and
- (d) removing youth with a mental disorder, as defined in 53-21-102, from state youth correctional facilities.

(2) The district court council, established in 3-1-1602, shall adopt policies and procedures, subject to review by the supreme court, necessary for the youth courts and office of court administrator to perform their duties under this chapter, including but not limited to policies and procedures regarding:

- (a) guidelines for evaluating out-of-home placements, programs, and services as provided in 41-5-2003;
- (b) administration of the youth court intervention and prevention account provided for in 41-5-2011;
- (c) monitoring of youth courts to promote consistency and uniformity in the placement of juveniles referred to the youth courts; and
- (d) approval of one or more risk assessment tools to be used by the youth courts.

History: En. Sec. 18, Ch. 587, L. 2001; amd. Sec. 18, Ch. 398, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 398 in (1) substituted "to perform its duties under this chapter" for "for the implementation of 41-5-130 through 41-5-132 and this part"; substituted (1)(a) through (1)(d) concerning monitoring, processing payments, determining allocation, and youth with a mental disorder for former (1)(a) through (1)(k) that read: "(a) defining and establishing criteria for early intervention regarding troubled youth and the development of community alternatives;

- (b) evaluating each youth court to ensure that the court is using early intervention strategies and community alternatives and is effectively controlling costs for youth placements;
- (c) distributing unused account funds to the youth courts;
- (d) determining the allocation of funds to the accounts for the youth courts;
- (e) determining the amount of funds to be withheld by the department as cost containment funds;
- (f) monitoring and auditing each youth court to ensure that account funds are being used as required by law;
- (g) distributing cost containment funds to youth courts;
- (h) monitoring youth courts to promote consistency and uniformity in the placement of juvenile offenders;
- (i) developing procedures for the operation of the cost containment review panel;
- (j) developing one or more risk assessment tools; and

(k) developing procedures for removing youth with serious mental illness from the juvenile correctional system"; deleted former (2) that read: "(2) It is the intent of the legislature that rules adopted by the department encourage the use of local, regional, and state resources for the placement of troubled youth"; inserted (2) concerning district court council adoption of policies and procedures; and made minor changes in style. Amendment effective June 30, 2007.

41-5-2007 through 41-5-2010 reserved.

41-5-2011. Youth court intervention and prevention account — statutory appropriation — administration. (1) There is a youth court intervention and prevention account in the state special revenue fund. The office of court administrator shall deposit in the account the following funds transferred by the department:

(a) funds transferred under 41-5-130(2) for evaluations of out-of-home placements, programs, and services;

(b) unexpended funds from the judicial districts' annual allocations as provided for in 41-5-130(8); and

(c) unexpended funds from the cost containment pool as provided for in 41-5-132.

(2) The youth court intervention and prevention account is statutorily appropriated, as provided in 17-7-502, to the supreme court. The office of court administrator shall administer the account in accordance with 41-5-2012.

History: En. Sec. 1, Ch. 482, L. 2005; amd. Sec. 19, Ch. 398, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 398 in (1) in first sentence after "youth" inserted "court", deleted former second and third sentences that read: "The money in the account must be used for the youth court intervention and prevention programs authorized in this part. All unexpended funds remaining at the end of a fiscal year in the accounts established under 41-5-130(6) must be transferred to the account established in this subsection", and inserted second sentence and (1)(a) through (1)(c) concerning deposit of designated funds; in (2) in first sentence near beginning after "youth" inserted "court" and at end deleted "for the purposes of 41-5-2003(3)" and in second sentence at end substituted "41-5-2012" for "rules adopted by the department of corrections"; and made minor changes in style. Amendment effective June 30, 2007.

41-5-2012. Allocation to judicial districts from youth court intervention and prevention account — judicial district plans — cost containment review — policies and procedures. (1) (a) At the beginning of each fiscal year, the office of court administrator shall allocate from the youth court intervention and prevention account to each judicial district an amount equal to the unexpended funds from the judicial district's annual allocation for the previous fiscal year under 41-5-130.

(b) In addition to the amount allocated under subsection (1)(a), at the beginning of each fiscal year, the office of court administrator shall allocate from the youth court intervention and prevention account to all judicial districts the unexpended funds from the cost containment pool transferred from the previous fiscal year under 41-5-132. The office shall allocate the funds according to the formula that was used to determine the judicial districts' annual allocations for the previous fiscal year under 41-5-130.

(2) Upon approval of the youth court judge, a judicial district may submit a plan to the office of court administrator for approval to expend the amounts allocated to the judicial district under subsection (1) for one or more of the following purposes:

(a) to establish or expand community prevention and intervention programs and services for youth;

(b) to provide an alternative method for funding out-of-home placements; and

(c) to provide matching funds for federal money for intervention and prevention programs that provide direct services to youth.

(3) Two or more judicial districts may jointly submit a plan to combine any portion of the amounts allocated to the districts under subsection (1) to expend funds on a regional or statewide basis in accordance with subsection (2).

(4) The cost containment review panel provided for in 41-5-131 shall review each plan submitted to the office of court administrator. The cost containment review panel shall recommend to the office whether each plan should be approved. The office shall consider the cost containment review panel's recommendation before approving or disapproving a plan.

(5) The office of court administrator shall notify the judicial district, cost containment review panel, and department in writing as to whether a plan has been approved or disapproved. If the office disapproves a plan, the judicial district may submit a revised plan.

(6) (a) A judicial district shall expend the amounts allocated to the district under subsection (1) in accordance with an approved plan by the end of the fiscal year following the fiscal year in which the amounts were allocated under subsection (1).

(b) Any portion of the amounts allocated under subsection (1) not expended within the time provided for in subsection (6)(a) must be transferred to the general fund.

(7) (a) Except as provided in subsection (7)(b), the district court council, established in 3-1-1602, shall adopt policies and procedures, subject to review by the supreme court, for administering this section, including procedures for submitting plans to the office of court administrator and criteria to be used by the office in evaluating and approving the plans.

(b) The cost containment review panel shall adopt procedures for reviewing plans submitted to the office of court administrator and making recommendations to the office on plan approval.

History: En. Sec. 20, Ch. 398, L. 2007.

Compiler's Comments

Effective Date: Section 25, Ch. 398, L. 2007, provided that this section is effective June 30, 2007.

Part 25

Criminally Convicted Youth Act

41-5-2501. Short title. This part may be cited as the "Criminally Convicted Youth Act".

History: En. Sec. 17, Ch. 532, L. 1999.

41-5-2502. Purpose. The criminally convicted youth act must be interpreted and construed to effectuate the following express legislative purposes:

(1) to protect the public;

(2) to hold youth who commit offenses that may be filed directly in district court pursuant to 41-5-206 accountable for their actions;

(3) to provide for the custody, assessment, care, supervision, treatment, education, rehabilitation, and work and skill development of youth convicted in district court; and

(4) to comply with the legislative purposes set forth in 41-5-102.

History: En. Sec. 18, Ch. 532, L. 1999.

41-5-2503. Disposition of criminally convicted youth. (1) The district court, in sentencing a youth adjudicated in district court pursuant to 41-5-206, shall:

(a) impose any sentence allowed by the statute that established the penalty for the offense of which the youth is convicted as if the youth were an adult and any conditions or restrictions allowed by statute;

(b) retain jurisdiction over the case until the criminally convicted youth reaches the age of 21;

(c) order the department to submit a status report to the court, county attorney, defense attorney, and juvenile probation officer every 6 months until the youth attains the age of 21. The report must include a recommendation from the department regarding the disposition of the criminally convicted youth.

(2) The district court shall review the criminally convicted youth's sentence pursuant to 41-5-2510 before the youth reaches the age of 21 if a hearing has not been requested under 41-5-2510.

History: En. Sec. 19, Ch. 532, L. 1999.

41-5-2504 through 41-5-2509 reserved.

41-5-2510. Sentence review hearing. (1) When a youth has been convicted as an adult pursuant to the provisions of 41-5-206, except for offenses punishable by death or life imprisonment or when a sentence of 100 years could be imposed, the county attorney, defense attorney, or youth may, at any time before the youth reaches the age of 21, request a hearing to review the sentence imposed on the youth. The department shall notify the court of the youth's impending birthday no later than 90 days before the youth's 21st birthday.

(2) After reviewing the status report and upon motion for a hearing, the court shall determine whether to hold a criminally convicted youth sentence review hearing. If the court, in its discretion, determines that a sentence review hearing is warranted or is required under 41-5-2503, the hearing must be held within 90 days after the filing of the request or determination. The sentencing court or county attorney shall notify the victim of the offense pursuant to Title 46, chapter 24.

(3) The sentencing court shall review the department's records, formal youth court records, victim statements, and any other pertinent information.

(4) The sentencing court, after considering the criminal, social, psychological, and any other records of the youth; any evidence presented at the hearing; and any statements by the victim and by the parent or parents or guardian of the youth and any other advocates for the youth shall determine whether the criminally convicted youth has been substantially rehabilitated based upon a preponderance of the evidence.

(5) In the event that the sentencing court determines that the youth has been substantially rehabilitated, the court shall determine whether to:

(a) suspend all or part of the remaining portion of the sentence, impose conditions and restrictions pursuant to 46-18-201, and place the youth on probation under the direction of the department, unless otherwise specified;

(b) impose all or part of the remaining sentence and make any additional recommendations to the department regarding the placement and treatment of the criminally convicted youth; or

(c) impose a combination of options allowed under subsections (5)(a) and (5)(b), not to exceed the total sentence remaining.

(6) The sentencing court may revoke a suspended sentence of a criminally convicted youth pursuant to 46-18-203.

History: En. Sec. 20, Ch. 532, L. 1999; amd. Sec. 7, Ch. 423, L. 2005.

TITLE 44

LAW ENFORCEMENT

CHAPTER 2

INVESTIGATION, COMMUNICATION, AND IDENTIFICATION

Part 5

Missing Children

44-2-501. Short title. This part may be cited as the "Missing Children Act of 1985".

History: En. Sec. 1, Ch. 559, L. 1985.

44-2-502. Definitions. As used in this part, the following definitions apply:

(1) "Missing child" means any person who has been reported as missing to a law enforcement authority and:

(a) who is under 18 years of age;

(b) whose temporary or permanent residence is in Montana or is believed to be in Montana; and

(c) whose location has not been determined.

(2) "Missing child report" is a report prepared on a form designed by the department of justice for use by private citizens and law enforcement authorities to report information about missing children to the missing children information program provided for in 44-2-503.

History: En. Sec. 2, Ch. 559, L. 1985.

44-2-503. Missing children information program. (1) The department of justice shall establish a missing children information program to create a central repository to aid in the location of missing children in Montana.

(2) The missing children information program shall:

(a) establish a system of intrastate communication of information relating to any child determined to be missing by the parent, guardian, or legal custodian of the child or by a law enforcement authority;

(b) provide a centralized file for the exchange of information on missing children within the state, including information obtained under the provisions of 44-2-401;

(c) interface with the national crime information center computer system for exchange of information on children suspected of interstate travel; and

(d) provide the superintendent of public instruction each month with a list of missing Montana school children for the purposes of 44-2-506.

History: En. Sec. 3, Ch. 559, L. 1985.

44-2-504. Reports to missing children information program. (1) All state, county, and municipal law enforcement authorities shall submit to the missing children information program provided for in 44-2-503 any missing child report and other information required by 44-2-401.

(2) Any parent, guardian, or legal custodian may submit a missing child report to the missing children information program on any child whose whereabouts is unknown, regardless of the circumstances, subsequent to making a report to the appropriate law enforcement authority within the county in which the child became missing.

(3) The parent, guardian, or legal custodian responsible for notifying the missing children information program or a law enforcement authority of a missing child shall immediately notify the authority and the program of any child whose location has been determined.

History: En. Sec. 4, Ch. 559, L. 1985.

44-2-505. Duties of law enforcement authority. Whenever a parent, guardian, or legal custodian of a child files a report with a law enforcement authority that the child is missing, the law enforcement authority shall:

(1) immediately inform all on-duty law enforcement officers of the existence of the missing child report;

(2) communicate the report to all other law enforcement authorities having jurisdiction in the county; and

(3) immediately enter the missing child report into the national crime information center computer system.

History: En. Sec. 5, Ch. 559, L. 1985.

44-2-506. List of missing Montana school children. (1) The superintendent of public instruction shall assist the missing children information program provided for in 44-2-503 in identifying and locating missing children who are enrolled in Montana public school districts in kindergarten through grade 12 by:

(a) collecting each month a list of missing Montana school children as provided by the missing children information program provided for in 44-2-503;

(b) distributing the list of missing school children on a monthly basis, unless the list has no change from the previous month's information, to all school districts admitting children to kindergarten through grade 12;

(c) designing the list to include pertinent available information for identification of the missing school child, including if possible a recent photograph of the child; and

(d) notifying the appropriate law enforcement agency and the missing children information program as soon as any additional information is obtained or contact is made with respect to a missing school child.

(2) Each school district in Montana shall:

(a) distribute to each school building within the district the list of missing school children provided for in subsection (1); and

(b) notify the appropriate law enforcement agency at the earliest known contact with any child whose name appears on the list of missing school children.

History: En. Sec. 6, Ch. 559, L. 1985.

44-2-507. Notice to parents of children absent from school. The trustees of any elementary or high school district shall establish procedures to be followed by school personnel

for attempting to contact by the end of a school day any parent, guardian, or legal custodian whose child is absent from school but who has not reported the child as absent for the school day to determine whether the parent, guardian, or legal custodian is aware of the child's absence from school.

History: En. Sec. 7, Ch. 559, L. 1985.

44-2-508 through 44-2-510 reserved.

44-2-511. School enrollment procedures to aid identification of missing children.

(1) When a child enrolls in a school district for the first time, the school district shall:

(a) require that the child's parent, guardian, or legal custodian present to the school, within 40 days of enrollment, proof of identity of the child; and

(b) request the appropriate school records of the child from the previous school attended by the child. The school enrolling the child shall make the request within 40 days of enrollment of the child.

(2) If a child's parent, guardian, or legal custodian does not present the proof of identity required in subsection (1) within 40 days of enrollment or if the school district does not receive the school records of the child within 60 days of enrollment, the school shall notify the missing children information program provided in 44-2-503 and a local law enforcement authority of the fact that no proof of identity has been presented for the child.

(3) A school district that receives a request for the school records of a child shall transfer the records to the requesting school as soon as possible.

(4) When a school district receives a notice from a law enforcement authority, parent, guardian, or legal custodian that a child who is or has been enrolled in that school has been reported as a missing child, the school district shall:

(a) flag in some manner the student records of the child; and

(b) notify the missing children information program and a local law enforcement authority if a request for the school records is received from another school district.

(5) If it is necessary for a local law enforcement authority to conduct an investigation on a missing child, school personnel may not inform the person claiming custody of the child of the investigation while it is being conducted.

(6) For the purposes of this section:

(a) "proof of identity" means a certified copy of a birth certificate, a certified transcript or similar student records from the previous school, or any documentary evidence that a school district considers to be satisfactory proof of identity; and

(b) "school district" means a school district as defined in 20-6-101 or a nonpublic elementary school or high school in the state.

History: En. Sec. 1, Ch. 407, L. 1987.

Part 7

Drug Abuse Resistance Education (D.A.R.E.)

44-2-701. Montana drug abuse resistance education trust fund account — administration by board of crime control. (1) There is a Montana drug abuse resistance education trust fund account in the state special revenue fund in the state treasury.

(2) Funds deposited in the account may be expended by the Montana board of crime control, as provided for in 2-15-2006, to fund services and activities under and payment of administrative costs of the Montana drug abuse resistance education program provided for in 44-2-702.

History: En. Sec. 1, Ch. 808, L. 1991.

44-2-702. Montana drug abuse resistance education program. (1) The Montana board of crime control shall use the money in the Montana drug abuse resistance education trust fund account established by 44-2-701 to fund services and activities operated by nonprofit, private, community-based educational and service organizations, units of local government, or school districts if those services and activities relate solely to the development, enhancement, and expansion of drug abuse resistance education in Montana.

(2) In administering the Montana drug abuse resistance education program, the Montana board of crime control shall:

- (a) identify priorities for funding services, activities, and criteria for the receipt of program funds;
- (b) monitor the expenditure of funds by organizations receiving funds under this section;
- (c) evaluate the effectiveness of services and activities under this section; and
- (d) adopt rules necessary to implement 44-2-703, 44-2-704, and this section.

History: En. Sec. 2, Ch. 808, L. 1991.

44-2-703. Gifts and grants to program. The Montana board of crime control may accept contributions, gifts, and grants, in money or otherwise, to the Montana drug abuse resistance education program. Upon receipt, contributions, monetary gifts, and grants must be paid into the Montana drug abuse resistance education trust fund account established by 44-2-701.

History: En. Sec. 3, Ch. 808, L. 1991.

44-2-704. Program costs. The costs incurred by the Montana board of crime control in administering the Montana drug abuse resistance education program must be paid with money from the Montana drug abuse resistance education trust fund account established by 44-2-701. The board shall keep costs to a minimum and shall use the board's existing office space, personnel, equipment, and supplies to the extent possible.

History: En. Sec. 4, Ch. 808, L. 1991.

44-2-705. Restriction on use of funds. Funds deposited in the Montana drug abuse resistance education trust fund account may be used only for the program authorized in 44-2-702 and may not be used to pay the expenses of any other program or service administered in whole or in part by the Montana board of crime control or the department of justice.

History: En. Sec. 5, Ch. 808, L. 1991.

TITLE 45

CRIMES

CHAPTER 5

OFFENSES AGAINST THE PERSON

Part 2

Assault and Related Offenses

45-5-211. Assault upon sports official. (1) A person commits the offense of assault upon a sports official if, while a sports official is acting as an official at an athletic contest in any sport at any level of amateur or professional competition, the person:

- (a) purposely or knowingly causes bodily injury to the sports official;
- (b) negligently causes bodily injury to the sports official with a weapon;
- (c) purposely or knowingly makes physical contact of an insulting or provoking nature with the sports official; or
- (d) purposely or knowingly causes reasonable apprehension of bodily injury in the sports official.

(2) A person convicted of assault upon a sports official shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. Sec. 1, Ch. 408, L. 1993.

Part 6

Offenses Against the Family

45-5-637. Tobacco possession or consumption by persons under 18 years of age prohibited — unlawful attempt to purchase — penalties. (1) A person under 18 years of age who knowingly possesses or consumes a tobacco product, as defined in 16-11-302, commits the offense of possession or consumption of a tobacco product.

(2) A person convicted of possession or consumption of a tobacco product:

(a) shall be fined \$50 for a first offense, no less than \$75 or more than \$100 for a second offense, and no less than \$100 or more than \$250 for a third or subsequent offense; or

(b) may be adjudicated on a petition alleging the person to be a youth in need of intervention under the provisions of the Montana Youth Court Act provided for in Title 41, chapter 5.

(3) A person convicted of possession or consumption of a tobacco product may also be required to perform community service or to attend a tobacco cessation program.

(4) A person under 18 years of age commits the offense of attempt to purchase a tobacco product if the person knowingly attempts to purchase a tobacco product, as defined in 16-11-302. A person convicted of attempt to purchase a tobacco product:

(a) for a first offense, shall be fined \$50 and may be ordered to perform community service;

(b) for a second or subsequent offense, shall be fined an amount not to exceed \$100 and may be ordered to perform community service.

(5) The fines collected under subsections (2) and (4) must be deposited to the credit of the general fund of the local government that employs the arresting officer, or if the arresting officer is an officer of the highway patrol, the fines must be credited to the county general fund in the county in which the arrest was made.

History: En. Sec. 1, Ch. 376, L. 1995; amd. Sec. 55, Ch. 550, L. 1997; amd. Sec. 4, Ch. 498, L. 2001.

CHAPTER 8 OFFENSES AGAINST PUBLIC ORDER

Part 1 Conduct Disruptive of Public Order

45-8-101. Disorderly conduct. (1) A person commits the offense of disorderly conduct if he knowingly disturbs the peace by:

(a) quarreling, challenging to fight, or fighting;

(b) making loud or unusual noises;

(c) using threatening, profane, or abusive language;

(d) discharging firearms, except at a shooting range during established hours of operation;

(e) rendering vehicular or pedestrian traffic impassable;

(f) rendering the free ingress or egress to public or private places impassable;

(g) disturbing or disrupting any lawful assembly or public meeting;

(h) transmitting a false report or warning of a fire or other catastrophe in such a place that its occurrence would endanger human life;

(i) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; or

(j) transmitting a false report or warning of an impending explosion in such a place that its occurrence would endanger human life.

(2) Except as provided in subsection (3), a person convicted of the offense of disorderly conduct shall be fined not to exceed \$100 or be imprisoned in the county jail for a term not to exceed 10 days, or both.

(3) A person convicted of a violation of subsection (1)(j) shall be fined not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

History: En. 94-8-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-101; amd. Sec. 1, Ch. 508, L. 1989; amd. Sec. 8, Ch. 415, L. 1991.

Part 2 Offensive, Indecent, and Inhumane Conduct

45-8-206. Public display or dissemination of obscene material to minors. (1) A person having custody, control, or supervision of any commercial establishment or newsstand may not knowingly or purposely:

(a) display obscene material to minors in such a way that minors, as a part of the invited public, will be able to view the material. However, a person is considered not to have displayed

obscene material to minors if the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the material is not exposed to view or other reasonable efforts were made to prevent view of the material by a minor.

(b) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view, with or without consideration, any obscene material; or

(c) present to a minor or participate in presenting to a minor, with or without consideration, any performance that is obscene to minors.

(2) A person does not violate this section if:

(a) the person had reasonable cause to believe the minor was 18 years of age. "Reasonable cause" includes but is not limited to being shown a draft card, driver's license, marriage license, birth certificate, educational identification card, governmental identification card, tribal identification card, or other official or apparently official card or document purporting to establish that the person is 18 years of age;

(b) the person is, or is acting as, an employee of a bona fide public school, college, or university or a retail outlet affiliated with and serving the educational purposes of a school, college, or university and the material or performance was disseminated in accordance with policies approved by the governing body of the institution;

(c) the person is an officer, director, trustee, or employee of a public library or museum and the material or performance was acquired by the library or museum and disseminated in accordance with policies approved by the governing body of the library or museum;

(d) an exhibition in a state of nudity is for a bona fide scientific or medical purpose for a bona fide school, library, or museum; or

(e) the person is a retail sales clerk with no financial interest in the material or performance or in the establishment displaying or selling the material or performance.

History: En. Sec. 2, Ch. 571, L. 1989; amd. Sec. 6, Ch. 180, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 180 in (2)(a) near middle of second sentence inserted "tribal identification card"; and made minor changes in style. Amendment effective October 1, 2007.

Part 3 Weapons

45-8-328. Carrying concealed weapon in prohibited place — penalty. (1) A person commits the offense of carrying a concealed weapon in a prohibited place if the person purposely or knowingly carries a concealed weapon in:

(a) portions of a building used for state or local government offices and related areas in the building that have been restricted;

(b) a bank, credit union, savings and loan institution, or similar institution during the institution's normal business hours. It is not an offense under this section to carry a concealed weapon while:

(i) using an institution's drive-up window, automatic teller machine, or unstaffed night depository; or

(ii) at or near a branch office of an institution in a mall, grocery store, or other place unless the person is inside the enclosure used for the institution's financial services or is using the institution's financial services.

(c) a room in which alcoholic beverages are sold, dispensed, and consumed under a license issued under Title 16 for the sale of alcoholic beverages for consumption on the premises.

(2) It is not a defense that the person had a valid permit to carry a concealed weapon. A person convicted of the offense shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed \$500, or both.

History: En. Sec. 8, Ch. 759, L. 1991; amd. Sec. 1, Ch. 572, L. 1999.

45-8-331. Switchblade knives. (1) Every person who carries or bears upon his person, who carries or bears within or on any motor vehicle or other means of conveyance owned or operated by him, or who owns, possesses, uses, stores, gives away, sells, or offers for sale a switchblade knife shall be punished by a fine not exceeding \$500 or by imprisonment in the county jail for a period not exceeding 6 months or by both such fine and imprisonment.

(2) A bona fide collector whose collection is registered with the sheriff of the county in which said collection is located is hereby exempted from the provisions of this section.

(3) For the purpose of this section a switchblade knife is defined as any knife which has a blade $1\frac{1}{2}$ inches long or longer which opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife.

History: En. Sec. 1, Ch. 243, L. 1957; Sec. 94-35-273, R.C.M. 1947; redes. 94-8-226 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-226.

45-8-344. Use of firearms by children under fourteen prohibited — exceptions. It is unlawful for a parent, guardian, or other person having charge or custody of a minor child under the age of 14 years to permit the minor child to carry or use in public any firearms, except when the child is accompanied by a person having charge or custody of the child or under the supervision of a qualified firearms safety instructor or an adult who has been authorized by the parent or guardian.

History: En. Sec. 1, Ch. 111, L. 1907; Sec. 8879, Rev. C. 1907; re-en. Sec. 11565, R.C.M. 1921; re-en. Sec. 11565, R.C.M. 1935; Sec. 94-3579, R.C.M. 1947; amd. Sec. 1, Ch. 139, L. 1963; redes. 94-8-221 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 40, Ch. 359, L. 1977; R.C.M. 1947, 94-8-221; amd. Sec. 1, Ch. 600, L. 1993.

45-8-345. Criminal liability of parent or guardian — prosecution. (1) Any parent, guardian, or other person violating the provisions of 45-8-344 shall be guilty of a misdemeanor.

(2) The county attorney, on complaint of any person, must prosecute violations of 45-8-344.

History: En. Sec. 2, Ch. 111, L. 1907; Sec. 8880, Rev. C. 1907; re-en. Sec. 11566, R.C.M. 1921; re-en. Sec. 11566, R.C.M. 1935; Sec. 94-3580, R.C.M. 1947; redes. 94-8-222 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-222.

45-8-351. Restriction on local government regulation of firearms. (1) Except as provided in subsection (2), no county, city, town, consolidated local government, or other local government unit may prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon, including a rifle, shotgun, handgun, or concealed handgun.

(2) (a) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of concealed or unconcealed weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

(b) Nothing contained herein shall allow any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others, nor shall anything contained herein prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise.

History: En. Sec. 1, Ch. 589, L. 1985; amd. Sec. 11, Ch. 759, L. 1991.

45-8-361. Possession or allowing possession of weapon in school building — exceptions — penalties — seizure and forfeiture or return authorized — definitions. (1) A person commits the offense of possession of a weapon in a school building if the person purposely and knowingly possesses, carries, or stores a weapon in a school building.

(2) A parent or guardian of a minor commits the offense of allowing possession of a weapon in a school building if the parent or guardian purposely and knowingly permits the minor to possess, carry, or store a weapon in a school building.

(3) (a) Subsection (1) does not apply to law enforcement personnel.

(b) The trustees of a district may grant persons and entities advance permission to possess, carry, or store a weapon in a school building.

(4) (a) A person convicted under this section shall be fined an amount not to exceed \$500, imprisoned in the county jail for a term not to exceed 6 months, or both. The court shall consider alternatives to incarceration that are available in the community.

(b) (i) A weapon in violation of this section may be seized and, upon conviction of the person possessing or permitting possession of the weapon, may be forfeited to the state or returned to the lawful owner.

(ii) If a weapon seized under the provisions of this section is subsequently determined to have been stolen or otherwise taken from the owner's possession without permission, the weapon must be returned to the lawful owner.

(5) As used in this section:

(a) "school building" means all buildings owned or leased by a local school district that are used for instruction or for student activities. The term does not include a home school provided for in 20-5-109.

(b) "weapon" means any type of firearm, a knife with a blade 4 or more inches in length, a sword, a straight razor, a throwing star, nun-chucks, or brass or other metal knuckles. The term also includes any other article or instrument possessed with the purpose to commit a criminal offense.

History: En. Sec. 1, Ch. 435, L. 1997; amd. Sec. 6, Ch. 581, L. 1999.

Part 4

Montana Street Terrorism Enforcement and Prevention Act

45-8-406. Supplying of firearms to criminal street gang. (1) A person commits the offense of supplying firearms to a criminal street gang if the person purposely or knowingly supplies, sells, or gives possession or control of any firearm to another, and the person has actual knowledge that the other person will use the firearm to commit an offense enumerated in 45-8-405 while actively participating in any criminal street gang whose members engage in a pattern of criminal street gang activity.

(2) Subsection (1) does not apply to a person who is convicted as a principal to the offense committed by the person to whom the firearm was supplied, sold, or given.

(3) A person convicted of the offense of supplying firearms to a criminal street gang shall be imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed \$1,000, or both.

History: En. Sec. 6, Ch. 285, L. 1997.

CHAPTER 9

DANGEROUS DRUGS

Part 1

Offenses Involving Dangerous Drugs

45-9-109. Criminal distribution of dangerous drugs on or near school property — penalty — affirmative defense. (1) A person commits the offense of criminal distribution of dangerous drugs on or near school property if the person violates 45-9-101 in, on, or within 1,000 feet of the real property comprising a public or private elementary or secondary school.

(2) Except as provided in 46-18-222, a person convicted of criminal distribution of dangerous drugs on or near school property:

(a) shall be imprisoned in the state prison for a term of not less than 3 years or more than life; and

(b) may be fined an amount of not more than \$50,000.

(3) It is not a defense to prosecution under subsection (1) that the person did not know the distance involved.

(4) It is an affirmative defense to prosecution for a violation of this section that:

(a) the prohibited conduct took place entirely within a private residence; and

(b) no person 17 years of age or younger was present in the private residence at any time during the commission of the offense.

History: En. Sec. 1, Ch. 519, L. 1991; amd. Sec. 13, Ch. 432, L. 1999.

TITLE 49

HUMAN RIGHTS

CHAPTER 1

BASIC RIGHTS

Part 1

Basic Personal Rights

49-1-101. Right of protection from personal injury. Besides the personal rights mentioned or recognized in other statutes and subject to the qualifications and restrictions provided by law, every person has the right of protection from bodily restraint or harm, personal insult, defamation, and injury to his personal relations.

History: En. Sec. 30, Civ. C. 1895; re-en. Sec. 3600, Rev. C. 1907; re-en. Sec. 5688, R.C.M. 1921; Cal. Civ. C. Sec. 43; Field Civ. C. Sec. 27; re-en. Sec. 5688, R.C.M. 1935; R.C.M. 1947, 64-201; amd. Sec. 1, Ch. 177, L. 1979.

49-1-102. Freedom from discrimination. (1) The right to be free from discrimination because of race, creed, religion, color, sex, physical or mental disability, age, or national origin is recognized as and declared to be a civil right. This right must include but not be limited to:

- (a) the right to obtain and hold employment without discrimination; and
- (b) the right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage, or amusement.

(2) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in subsection (1). Consideration of religious factors by a licensed child-placing agency that is affiliated with a particular religious faith is not arbitrary consideration of religion within the meaning of this section.

History: En. Sec. 1, Ch. 201, L. 1965; amd. Sec. 1, Ch. 39, L. 1971; amd. Sec. 1, Ch. 77, L. 1974; amd. Sec. 1, Ch. 524, L. 1975; amd. Sec. 6, Ch. 38, L. 1977; R.C.M. 1947, 64-301; amd. Sec. 2, Ch. 682, L. 1991; amd. Sec. 1, Ch. 407, L. 1993.

49-1-103. Right to use force. Any necessary force may be used to protect from wrongful injury the person or property of one's self, of a wife, husband, child, parent, or other relative or member of one's family, or of a ward, servant, master, or guest.

History: En. Sec. 36, Civ. C. 1895; re-en. Sec. 3606, Rev. C. 1907; re-en. Sec. 5694, R.C.M. 1921; Cal. Civ. C. Sec. 50; Based on Field Civil C. Sec. 33; re-en. Sec. 5694, R.C.M. 1935; R.C.M. 1947, 64-210.

Part 2

Basic Political Rights

49-1-201. Right to state's protection. Every person while within the jurisdiction of this state is entitled to its protection.

History: En. Sec. 80, Pol. C. 1895; re-en. Sec. 33, Rev. C. 1907; re-en. Sec. 34, R.C.M. 1921; Cal. Pol. C. Sec. 54; re-en. Sec. 34, R.C.M. 1935; R.C.M. 1947, 83-401.

49-1-202. Right to hold elected office. Every elector is eligible to the office for which he is an elector, except where otherwise specially provided.

History: En. Sec. 84, Pol. C. 1895; re-en. Sec. 37, Rev. C. 1907; re-en. Sec. 38, R.C.M. 1921; Cal. Pol. C. Sec. 58; re-en. Sec. 38, R.C.M. 1935; R.C.M. 1947, 83-405.

49-1-203. Rights and duties of electors as compared to nonelectors. An elector has no rights or duties beyond those of a citizen not an elector, except the right and duty of holding and electing to office.

History: En. Sec. 85, Pol. C. 1895; re-en. Sec. 38, Rev. C. 1907; re-en. Sec. 39, R.C.M. 1921; Cal. Pol. C. Sec. 59; re-en. Sec. 39, R.C.M. 1935; R.C.M. 1947, 83-406.

49-1-204. Rights and duties of citizens of other states. A citizen of the United States who is not a citizen of this state has the same rights and duties as a citizen of this state not an elector.

History: En. Sec. 86, Pol. C. 1895; re-en. Sec. 39, Rev. C. 1907; re-en. Sec. 40, R.C.M. 1921; Cal. Pol. C. Sec. 60; re-en. Sec. 40, R.C.M. 1935; R.C.M. 1947, 83-407.

CHAPTER 2 ILLEGAL DISCRIMINATION

Part 1 General Provisions

49-2-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Age” means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) “Aggrieved party” means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, and who has been or is likely to be specially and injuriously affected by a violation of this chapter.

(3) “Commission” means the commission for human rights provided for in 2-15-1706.

(4) “Commissioner” means the commissioner of labor and industry provided for in 2-15-1701.

(5) “Credit” means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment. It includes without limitation the right to incur and defer debt that is secured by residential real property.

(6) “Credit transaction” means any invitation to apply for credit, application for credit, extension of credit, or credit sale.

(7) “Creditor” means a person who, regularly or as a part of the person’s business, arranges for the extension of credit for which the payment of a financial charge or interest is required, whether in connection with loans, sale of property or services, or otherwise.

(8) “Department” means the department of labor and industry provided for in 2-15-1701.

(9) “Educational institution” means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.

(10) “Employee” means an individual employed by an employer.

(11) “Employer” means an employer of one or more persons or an agent of the employer but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.

(12) “Employment agency” means a person undertaking to procure employees or opportunities to work.

(13) “Financial institution” means a commercial bank, trust company, savings bank, finance company, savings and loan association, credit union, investment company, or insurance company.

(14) “Housing accommodation” means a building or portion of a building, whether constructed or to be constructed, that is or will be used as the sleeping quarters of its occupants.

(15) “Labor organization” means an organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.

(16) “National origin” means ancestry.

(17) (a) “Organization” means a corporation, association, or any other legal or commercial entity that engages in advocacy of, enforcement of, or compliance with legal interests affected by this chapter.

(b) The term does not include a labor organization.

(18) “Person” means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts,

unincorporated employees' associations, employers, employment agencies, organizations, or labor organizations.

(19) (a) "Physical or mental disability" means:

(i) a physical or mental impairment that substantially limits one or more of a person's major life activities;

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based on, because of, on the basis of, or on the grounds of physical or mental disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental disability. An accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

(20) (a) "Public accommodation" means a place that caters or offers its services, goods, or facilities to the general public subject only to the conditions and limitations established by law and applicable to all persons. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbering, cosmetology, electrology, esthetics, or manicuring salon or shop, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business establishments.

(b) Public accommodation does not include an institution, club, or place of accommodation that proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this subsection (20), any lodge of a recognized national fraternal organization is considered by its nature distinctly private.

History: En. 64-305 by Sec. 1, Ch. 283, L. 1974; amd. Sec. 1, Ch. 121, L. 1975; amd. Sec. 2, Ch. 524, L. 1975; amd. Sec. 1, Ch. 35, L. 1977; R.C.M. 1947, 64-305; amd. Sec. 2, Ch. 177, L. 1979; amd. Sec. 1, Ch. 543, L. 1989; amd. Sec. 1, Ch. 241, L. 1991; amd. Sec. 1, Ch. 235, L. 1993; amd. Sec. 2, Ch. 407, L. 1993; amd. Sec. 4, Ch. 467, L. 1997; amd. Sec. 21, Ch. 243, L. 2003.

49-2-102. Records to be kept. The state, employers, labor organizations, and employment agencies shall maintain records on age, sex, and race that are required to administer the civil rights laws and regulations. These records are confidential and available only to federal and state personnel legally charged with administering civil rights laws and regulations. However, statistical information compiled from records on age, sex, and race shall be made available to the general public.

History: En. 64-306.1 by Sec. 4, Ch. 524, L. 1975; amd. Sec. 1, Ch. 27, L. 1977; R.C.M. 1947, 64-306.1(2).

Part 2 Commission for Human Rights

49-2-201. Repealed. Sec. 18, Ch. 467, L. 1997.

History: (1)En. 64-311 by Sec. 8, Ch. 283, L. 1974; amd. Sec. 9, Ch. 524, L. 1975; Sec. 64-311, R.C.M. 1947;(2)En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; Sec. 64-308, R.C.M. 1947; R.C.M. 1947, 64-308(part), 64-311.

49-2-202. Authority to require posted notice. The commission may require any employer, employment agency, labor union, educational institution, or financial institution or the owner, lessee, manager, agent, or employee of any public accommodation or housing accommodation subject to this chapter to post, in a conspicuous place on his premises or in the accommodation, a notice to be prepared or approved by the commission containing relevant information that the commission considers necessary to explain this chapter. Any person or institution subject to this section who refuses to comply with an order of the commission respecting the posting of a notice is guilty of a misdemeanor and punishable by a fine of not more than \$50.

History: En. 64-314 by Sec. 12, Ch. 524, L. 1975; R.C.M. 1947, 64-314; amd. Sec. 3, Ch. 177, L. 1979.

49-2-203. Subpoena power. (1) The commission may subpoena witnesses, take the testimony of any person under oath, administer oaths, and, in connection therewith, require the production for examination of books, papers, or other tangible evidence relating to a matter in question before the commission.

(2) The department's staff may request that a subpoena relating to a matter under investigation be issued by the commissioner or the commissioner's authorized representative. The authorized representative may not be involved in enforcement of human rights. The commissioner may subpoena witnesses, take testimony under oath, administer oaths, and require the production, for examination, of books, papers, or other intangible evidence.

(3) A party may request subpoenas from the commissioner for the purposes provided in subsection (2).

(4) Subpoenas issued pursuant to this section may be enforced as provided in 2-4-104 of the Montana Administrative Procedure Act.

History: En. 64-313 by Sec. 11, Ch. 524, L. 1975; R.C.M. 1947, 64-313; amd. Sec. 5, Ch. 467, L. 1997.

49-2-204. Rules. (1) The commission shall adopt procedural and substantive rules necessary to implement the commission's responsibilities under this chapter. Rulemaking procedures must comply with the requirements of the Montana Administrative Procedure Act. At a minimum, the commission shall adopt as part of its procedural rules all applicable portions of the Montana Rules of Civil Procedure and the Montana Rules of Evidence. The commission may adopt the procedural provisions of Title 46 as it considers appropriate.

(2) The department shall adopt procedural and substantive rules necessary to implement the department's responsibilities under this chapter. Rules adopted under this chapter must comply with the Montana Administrative Procedure Act. For contested case hearings conducted pursuant to 49-2-505, the department shall adopt all applicable portions of the Montana Rules of Civil Procedure and the Montana Rules of Evidence.

History: En. 64-315 by Sec. 13, Ch. 524, L. 1975; R.C.M. 1947, 64-315; amd. Sec. 6, Ch. 467, L. 1997.

49-2-205. Purpose. It is the intent of the legislature that the commission sit in independent judgment of complaints of alleged discrimination in Montana and that the staff operate under the direction and control of the commissioner. The staff is not independent of the commissioner. It is the intent of the legislature that the commission and the department not favor, directly or indirectly, complainants or respondents with procedural or substantive matters of discrimination in Montana. The commission and the department shall maintain the highest standards of objectivity and impartiality when judging cases asserting alleged discrimination in Montana. It is not the intent of the legislature that the department be prohibited from dismissing matters, from referring matters to other agencies following an initial inquiry and interview, or from reaching a decision in an investigation or contested case hearing.

History: En. Sec. 1, Ch. 467, L. 1997.

49-2-206 through 49-2-209 reserved.

49-2-210. Enforcement. (1) When a possible violation of this chapter comes to the attention of the department, the commissioner may initiate a complaint on behalf of the department. The complaint must be signed by the commissioner.

(2) A person is not subject to penalties under this chapter if compliance with the provisions of this chapter would cause the person to violate the provisions of another state law.

History: En. Sec. 15, Ch. 467, L. 1997.

Part 3 Prohibited Discriminatory Practices

49-2-301. Retaliation prohibited. It is an unlawful discriminatory practice for a person, educational institution, financial institution, or governmental entity or agency to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

History: Ap.p. Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; Sec. 64-306, R.C.M. 1947; Ap.p. Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; Sec. 64-312, R.C.M. 1947; R.C.M. 1947, 64-306(9), 64-312(2); amd. Sec. 4, Ch. 177, L. 1979.

49-2-302. Aiding, coercing, or attempting. It is unlawful for a person, educational institution, financial institution, or governmental entity or agency to aid, abet, incite, compel, or coerce the doing of an act forbidden under this chapter or to attempt to do so.

History: En. 64-312 by Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; R.C.M. 1947, 64-312(1); amd. Sec. 5, Ch. 177, L. 1979.

49-2-303. Discrimination in employment. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of race, creed, religion, color, or national origin or because of age, physical or mental disability, marital status, or sex when the reasonable demands of the position do not require an age, physical or mental disability, marital status, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, creed, religion, color, or national origin or because of age, physical or mental disability, marital status, or sex when the reasonable demands of the program do not require an age, physical or mental disability, marital status, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application that expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications must be strictly construed.

(3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

(4) The application of a hiring preference, as provided for in 2-18-111 and 18-1-110, may not be construed to be a violation of this section.

(5) It is not a violation of the prohibition against marital status discrimination in this section:

(a) for an employer or labor organization to provide greater or additional contributions to a bona fide group insurance plan for employees with dependents than to those employees without dependents or with fewer dependents; or

(b) for an employer to employ or offer to employ a person who is qualified for the position and to also employ or offer to employ the person's spouse.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(1), (2); amd. Sec. 1, Ch. 279, L. 1983; amd. Sec. 1, Ch. 342, L. 1985; amd. Sec. 3, Ch. 506, L. 1991; amd. Sec. 3, Ch. 13, L. 1993; amd. Sec. 3, Ch. 407, L. 1993; amd. Sec. 1, Ch. 287, L. 2001.

49-2-304. Discrimination in public accommodations. (1) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation:

(a) to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, marital status, race, age, physical or mental disability, creed, religion, color, or national origin;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any of the services, goods, facilities, advantages, or privileges of the public accommodation will be refused, withheld from, or denied

to a person of a certain race, creed, religion, sex, marital status, age, physical or mental disability, color, or national origin.

(2) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for a licensee under Title 16, chapter 4, to exclude from its membership or from its services, goods, facilities, advantages, privileges, or accommodations any individual on the grounds of race, color, religion, creed, sex, marital status, age, physical or mental disability, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization.

(3) Nothing in this section prohibits public accommodations from giving or providing special benefits, incentives, discounts, or promotions for the benefit of individuals based on age.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(3); amd. Sec. 1, Ch. 3, L. 1989; amd. Sec. 2, Ch. 543, L. 1989; amd. Sec. 1, Ch. 454, L. 1991; amd. Sec. 4, Ch. 407, L. 1993.

49-2-305. Discrimination in housing — exemptions. (1) It is an unlawful discriminatory practice for the owner, lessee, or manager having the right to sell, lease, or rent a housing accommodation or improved or unimproved property or for any other person:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, marital status, race, creed, religion, color, age, familial status, physical or mental disability, or national origin;

(b) to discriminate against a person because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or property;

(c) to make an inquiry of the sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin of a person seeking to buy, lease, or rent a housing accommodation or property for the purpose of discriminating on the basis of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin;

(d) to refuse to negotiate for a sale or to otherwise make unavailable or deny a housing accommodation or property because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin;

(e) to represent to a person that a housing accommodation or property is not available for inspection, sale, or rental because of that person's sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin when the housing accommodation or property is in fact available; or

(f) for profit, to induce or attempt to induce a person to sell or rent a housing accommodation or property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin.

(2) The rental of sleeping rooms in a private residence designed for single-family occupancy in which the owner also resides is excluded from the provisions of subsection (1), provided that the owner rents no more than three sleeping rooms within the residence.

(3) It is an unlawful discriminatory practice to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement that indicates any preference, limitation, or discrimination that is prohibited by subsection (1) or any intention to make or have a prohibited preference, limitation, or discrimination.

(4) It is an unlawful discriminatory practice for a person to discriminate because of a physical or mental disability of a buyer, lessee, or renter; a person residing in or intending to reside in or on the housing accommodation or property after it is sold, leased, rented, or made available; or any person associated with that buyer, lessee, or renter:

(a) in the sale, rental, or availability of the housing accommodation or property;

(b) in the terms, conditions, or privileges of a sale or rental of the housing accommodation or property; or

(c) in the provision of services or facilities in connection with the housing accommodation or property.

(5) For purposes of subsections (1) and (4), discrimination because of physical or mental disability includes:

(a) refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person with a disability if the modifications may be necessary to allow the person full enjoyment of the premises, except that in the case of a lease or rental, the landlord may, when it is reasonable to do so, condition permission for a modification on the lessor's or renter's agreement to restore the interior of the premises to the condition that existed before the modification, except for reasonable wear and tear;

(b) refusal to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to allow the person equal opportunity to use and enjoy a housing accommodation or property; or

(c) (i) except as provided in subsection (5)(c)(ii), in connection with the design and construction of a covered multifamily housing accommodation, a failure to design and construct the housing accommodation in a manner that:

(A) provides at least one accessible building entrance on an accessible route;

(B) makes the public use and common use portions of the housing accommodation readily accessible to and usable by a person with a disability;

(C) provides that all doors designed to allow passage into and within all premises within the housing accommodation are sufficiently wide to allow passage by a person with a disability who uses a wheelchair; and

(D) ensures that all premises within the housing accommodation contain the following features of adaptive design:

(I) an accessible route into and through the housing accommodation;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms that allow an individual who uses a wheelchair to maneuver about the space;

(ii) a covered multifamily housing accommodation that does not have at least one building entrance on an accessible route because it is impractical to do so due to the terrain or unusual characteristics of the site is not required to comply with the requirements of subsection (5)(c)(i).

(6) For purposes of subsection (5), the term "covered multifamily housing accommodation" means:

(a) a building consisting of four or more dwelling units if the building has one or more elevators; and

(b) ground floor units in a building consisting of four or more dwelling units.

(7) (a) It is an unlawful discriminatory practice for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin against a person in making available a transaction or in the terms or conditions of a transaction.

(b) For purposes of this subsection (7), the term "residential real estate-related transaction" means any of the following:

(i) the making or purchasing of loans or providing other financial assistance:

(A) for purchasing, constructing, improving, repairing, or maintaining a housing accommodation or property; or

(B) secured by residential real estate; or

(ii) the selling, brokering, or appraising of residential real property.

(8) It is an unlawful discriminatory practice to deny a person access to or membership or participation in a multiple-listing service; real estate brokers' organization; or other service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property or to discriminate against the person in the terms or conditions of access, membership, or participation because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin.

(9) It is an unlawful discriminatory practice to coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of or because of the person having exercised or enjoyed

or having aided or encouraged any other person in the exercise or enjoyment of a right granted or protected by this section.

(10) The prohibitions of this section against discrimination because of age and familial status do not extend to housing for older persons. "Housing for older persons" means housing:

(a) provided under any state or federal program specifically designed and operated to assist elderly persons;

(b) intended for, and solely occupied by, persons 62 years of age or older; or

(c) intended and operated for occupancy by at least one person 55 years of age or older per unit in accordance with the provisions of 42 U.S.C. 3607(b)(2)(C) and (b)(3) through (b)(5), as those provisions read on March 31, 1996.

(11) The prohibitions of subsection (1) against discrimination because of age and familial status do not extend to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than two families living independently of each other, if the owner actually maintains and occupies one of the living quarters as the owner's residence.

(12) For purposes of this section, "familial status" means having a child or children who live or will live with a person. A distinction based on familial status includes one that is based on the age of a child or children who live or will live with a person.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(4); amd. Sec. 6, Ch. 177, L. 1979; amd. Sec. 1, Ch. 335, L. 1981; amd. Sec. 1, Ch. 503, L. 1989; amd. Sec. 1, Ch. 328, L. 1991; amd. Sec. 2, Ch. 454, L. 1991; amd. Sec. 1, Ch. 801, L. 1991; amd. Sec. 5, Ch. 407, L. 1993; amd. Sec. 1, Ch. 194, L. 1997.

49-2-306. Discrimination in financing and credit transactions. (1) It is an unlawful discriminatory practice for a financial institution, upon receiving an application for financial assistance, to permit an official or employee, during the execution of that person's duties, to discriminate against the applicant because of sex, marital status, race, creed, religion, age, physical or mental disability, color, or national origin in a term, condition, or privilege relating to the obtaining or use of the institution's financial assistance, unless based on reasonable grounds.

(2) It is an unlawful discriminatory practice for a creditor to discriminate on the basis of race, color, religion, creed, national origin, age, mental or physical disability, sex, or marital status against any person in any credit transaction that is subject to the jurisdiction of any state or federal court of record.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(5), (8); amd. Sec. 6, Ch. 407, L. 1993.

49-2-307. Discrimination in education. It is an unlawful discriminatory practice for an educational institution:

(1) to exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, conditions, or privileges of the institution because of race, creed, religion, sex, marital status, color, age, physical disability, or national origin or because of mental disability, unless based on reasonable grounds;

(2) to make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information or to make or keep a record concerning the race, color, sex, marital status, age, creed, religion, physical or mental disability, or national origin of an applicant for admission, except as permitted by regulations of the commission;

(3) to print, publish, or cause to be printed or published a catalog or other notice or advertisement indicating a limitation, specification, or discrimination based on the race, color, creed, religion, age, physical or mental disability, sex, marital status, or national origin of an applicant for admission; or

(4) to announce or follow a policy of denial or limitation of educational opportunities of a group or its members, through a quota or otherwise, because of race, color, sex, marital status, age, creed, religion, physical or mental disability, or national origin.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(7); amd. Sec. 7, Ch. 407, L. 1993.

49-2-308. Discrimination by the state. (1) It is an unlawful discriminatory practice for the state or any of its political subdivisions:

(a) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, creed, religion, sex, marital status, color, age, physical or mental disability, or national origin, unless based on reasonable grounds;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any local, state, or federal funds, services, goods, facilities, advantages, or privileges of the office or agency will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, marital status, color, age, physical or mental disability, or national origin or that the patronage of a person of a particular race, creed, religion, sex, marital status, color, age, or national origin or possessing a physical or mental disability is unwelcome or not desired or solicited, unless based on reasonable grounds;

(c) to refuse employment to a person, to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of that person's political beliefs. However, this prohibition does not apply to policymaking positions on the immediate staff of an elected officer of the executive branch provided for in Article VI, section 1, of the Montana constitution, to the appointment by the governor of a director of a principal department provided for in Article VI, section 7, of the Montana constitution, or to the immediate staff of the majority and minority leadership of the Montana legislature.

(2) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in subsection (1).

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(6); amd. Sec. 3, Ch. 682, L. 1991; amd. Sec. 8, Ch. 407, L. 1993.

49-2-309. Discrimination in insurance and retirement plans. (1) It is an unlawful discriminatory practice for a financial institution or person to discriminate solely on the basis of sex or marital status in the issuance or operation of any type of insurance policy, plan, or coverage or in any pension or retirement plan, program, or coverage, including discrimination in regard to rates or premiums and payments or benefits.

(2) This section does not apply to any insurance policy, plan, or coverage or to any pension or retirement plan, program, or coverage in effect prior to October 1, 1985.

(3) It is not a violation of the prohibition against marital status discrimination in this section for an employer to provide greater or additional contributions to a bona fide group insurance plan for employees with dependents than to those employees without dependents or with fewer dependents.

History: En. Secs. 1, 3, Ch. 531, L. 1983; amd. Sec. 4, Ch. 13, L. 1993.

49-2-310. Maternity leave — unlawful acts of employers. It shall be unlawful for an employer or his agent to:

(1) terminate a woman's employment because of her pregnancy;

(2) refuse to grant to the employee a reasonable leave of absence for such pregnancy;

(3) deny to the employee who is disabled as a result of pregnancy any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by her employer, provided that the employer may require disability as a result of pregnancy to be verified by medical certification that the employee is not able to perform her employment duties; or

(4) require that an employee take a mandatory maternity leave for an unreasonable length of time.

History: En. 41-2602 by Sec. 2, Ch. 320, L. 1975; R.C.M. 1947, 41-2602(1); amd. Sec. 1, Ch. 285, L. 1983; MCA 1981, 39-7-203; redes. 49-2-310 by Sec. 2, Ch. 285, L. 1983.

49-2-311. Reinstatement to job following pregnancy-related leave of absence. Upon signifying her intent to return at the end of her leave of absence, such employee shall be reinstated to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other service credits unless, in the case of a private employer, the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

History: En. 41-2602 by Sec. 2, Ch. 320, L. 1975; R.C.M. 1947, 41-2602(2); MCA 1981, 39-7-204; redes. 49-2-311 by Sec. 2, Ch. 285, L. 1983.

Part 4 Exceptions to Prohibitions

49-2-401. Repealed. Sec. 11, Ch. 801, L. 1991.

History: En. 64-306.1 by Sec. 4, Ch. 524, L. 1975; amd. Sec. 1, Ch. 27, L. 1977; R.C.M. 1947, 64-306.1(1); amd. Sec. 7, Ch. 177, L. 1979.

49-2-402. “Reasonable” to be strictly construed. Any grounds urged as a “reasonable” basis for an exemption under any section of this chapter shall be strictly construed.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(10).

49-2-403. Specific limits on justification. (1) Except as permitted in 49-2-303(3) through (5) and 49-3-201(5), sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin may not comprise justification for discrimination except for the legally demonstrable purpose of correcting a previous discriminatory practice.

(2) Age or mental disability may represent a legitimate discriminatory criterion in credit transactions only as it relates to a person’s capacity to make or be bound by contracts or other obligations.

History: En. 64-307 by Sec. 3, Ch. 283, L. 1974; amd. Sec. 3, Ch. 121, L. 1975; amd. Sec. 5, Ch. 524, L. 1975; amd. Sec. 8, Ch. 38, L. 1977; R.C.M. 1947, 64-307(1), (2); amd. Sec. 2, Ch. 342, L. 1985; amd. Sec. 4, Ch. 506, L. 1991; amd. Sec. 5, Ch. 13, L. 1993; amd. Sec. 9, Ch. 407, L. 1993.

49-2-404. Distinctions permitted for modesty or privacy. Separate lavatory, bathing, or dressing facilities based on the distinction of sex may be maintained for the purpose of modesty or privacy.

History: En. 64-307 by Sec. 3, Ch. 283, L. 1974; amd. Sec. 3, Ch. 121, L. 1975; amd. Sec. 5, Ch. 524, L. 1975; amd. Sec. 8, Ch. 38, L. 1977; R.C.M. 1947, 64-307(3).

49-2-405. Veterans’ and persons with disabilities employment preference. The application of an employment preference as provided for in Title 39, chapter 29 or 30, and 10-2-402 by a public employer as defined in 39-29-101 and 39-30-103 may not be construed to constitute a violation of this chapter.

History: En. Sec. 12, Ch. 1, Sp. L. 1983; amd. Sec. 15, Ch. 646, L. 1989.

Part 5 Enforcement

49-2-501. Filing complaints. (1) A person claiming to be aggrieved by any discriminatory practice prohibited by this chapter may file a complaint with the department.

(2) A complaint may be filed on behalf of a person charging unlawful discrimination prohibited by this chapter if the person acting on behalf of the charging party is the charging party’s guardian, attorney, or duly authorized representative or an advocacy group, labor organization, or other organization acting as an authorized representative.

(3) The complaint must be written and verified and must state the name and address of the party alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice.

(4) (a) Except as provided in 49-2-510 and subsection (4)(b) of this section, a complaint under this chapter must be filed with the department within 180 days after the alleged unlawful discriminatory practice occurred or was discovered.

(b) If the charging party has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered.

(5) If the department determines that the complaint is untimely, it shall dismiss the complaint on a finding of no reasonable cause. A charging party may file objections to the dismissal with the commission pursuant to 49-2-511.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(1); amd. Sec. 8, Ch. 177, L. 1979; amd. Sec. 1, Ch. 415, L. 1987; amd. Sec. 3, Ch. 801, L. 1991; amd. Sec. 7, Ch. 467, L. 1997; amd. Sec. 1, Ch. 28, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 28 in (1) at beginning substituted "A person" for "A complaint may be filed with the department by any party" and at end inserted "may file a complaint with the department"; in (2) near beginning after "behalf of a" substituted "person charging unlawful discrimination" for "party claiming to be aggrieved by a discriminatory practice" and in two places substituted reference to charging party for reference to aggrieved party; in (3) near middle after "party" deleted "educational institution, financial institution, or governmental entity or agency"; in (4)(b) at beginning of first sentence substituted "charging party" for "complainant"; deleted former (4)(c) that read: "(c) Any complaint not filed within the times set forth in this section may not be considered by the commission or the department"; inserted (5) regarding dismissal of an untimely complaint; and made minor changes in style. Amendment effective July 1, 2007.

49-2-502. Repealed. Sec. 18, Ch. 467, L. 1997.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(part).

49-2-503. Temporary relief by court order. At any time after a complaint is filed under this chapter, a district court may, upon the application of the commissioner, the department, or the charging party, enter a preliminary injunction against a respondent in the case. The procedure for granting the order is as provided by statute for preliminary injunctions in civil actions.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(3); amd. Sec. 4, Ch. 801, L. 1991; amd. Sec. 8, Ch. 467, L. 1997; amd. Sec. 2, Ch. 28, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 28 near middle of first sentence after "commissioner" inserted "the department" and after "or the" substituted "charging party" for "complainant"; and made minor changes in style. Amendment effective July 1, 2007.

49-2-504. Informal investigation — conciliation — findings. (1) The department shall informally investigate the matters set out in the complaint promptly and impartially to determine whether there is reasonable cause to believe that the allegations are supported by a preponderance of the evidence.

(2) (a) During the informal investigation process and before the department issues a finding under subsection (7), the department may attempt to resolve the complaint by mediation.

(b) If the department makes a finding under subsection (7)(c) that there is reasonable cause to believe that unlawful discrimination occurred, the department shall attempt to resolve the complaint by conciliation in a manner that, in addition to providing redress for the complaint, includes conditions that eliminate the discriminatory practice, if any, found in the investigation.

(3) The department shall, within 10 business days following receipt of a filed complaint, notify a respondent that the respondent is the subject of a filed complaint. The notification must be in writing and must include a copy of the filed complaint. If requested, the department shall also provide the parties with all other information related to the complaint in the possession of the department that is not currently in the possession of the parties or a party. The department shall make known to the parties the fact that information is available upon request. The department may not investigate a complaint until it has received notice that the respondent has received the department's notification of the complaint.

(4) If the department determines that the inclusion of documents or information obtained by the department would seriously impede the rights of a person or the proper investigation of the complaint, the information may be excluded from the notification by providing a written summary of the information. The written summary must include sufficient information to give maximum effect to the intent of this chapter.

(5) The respondent shall file an answer to a complaint filed with the department within 10 business days of the respondent's receipt of the complaint. An answer may be a response simply admitting or denying the allegations without further specificity or requesting additional information from the department. The time for filing an answer may be extended by a showing of good cause.

(6) The department shall commence proceedings within 30 days after receipt of a complaint.

(7) (a) After the informal investigation, the department shall issue a finding on whether there is reasonable cause to believe that a preponderance of the evidence supports the charging party's allegation of unlawful discrimination. The finding must be issued within 180 days after a complaint is filed, except that the department shall issue the finding within 120 days after a complaint is filed under 49-2-305.

(b) If the department finds that there is no reasonable cause to believe that unlawful discrimination occurred, it shall issue a notice of dismissal and dismiss the case from the department's administrative process. After receipt of a notice of dismissal, a charging party may:

(i) continue the administrative process by filing objections with the commission as provided in 49-2-511; or

(ii) discontinue the administrative process and commence proceedings in district court as provided in 49-2-511.

(c) If the department finds that there is reasonable cause to believe that unlawful discrimination occurred and conciliation efforts are unsuccessful, the department shall certify the complaint for hearing pursuant to 49-2-505.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(4); amd. Sec. 9, Ch. 467, L. 1997; amd. Sec. 3, Ch. 28, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 28 in (1) near middle after "impartially" substituted "to determine whether there is reasonable cause to believe that" for "If the department determines that"; inserted (2)(a) allowing mediation during the informal investigation process; in (2)(b) at beginning inserted "If the department makes a finding under subsection (7)(c) that there is reasonable cause to believe that unlawful discrimination occurred, the department", after "complaint by" deleted "conference", and after "conciliation" substituted "in a manner" for "and persuasion"; in (4) at beginning of first sentence after "If" substituted "the department determines" for "a complaint is filed relative to an employment-related complaint and if the commissioner decides", after "or information" substituted "obtained by the department" for "contained in the complaint", and at end after "information" deleted "contained in the complaint"; in (7)(a) at beginning of first sentence substituted "After the informal investigation, the department shall issue a finding on whether there is reasonable cause to believe that a preponderance of the evidence supports the charging party's allegation of unlawful discrimination. The finding must be issued" for "The department shall make a finding regarding the merit or nonmerit of the complaint" and in second sentence after "shall" substituted "issue" for "make"; inserted (7)(b) concerning dismissal of the case; inserted (7)(c) regarding certification of the case for hearing; and made minor changes in style. Amendment effective July 1, 2007.

49-2-505. Contested case hearing — appeal to commission — final agency decision. (1) The department shall hold a contested case hearing on a complaint that is certified for hearing under 49-2-504 or that is remanded for hearing by the commission or by a reviewing court. The department shall serve notice of the hearing and a copy of the complaint on the parties.

(2) If the parties mutually agree to extend the time for hearing beyond 12 months after the complaint is filed, then the parties shall stipulate to a schedule for proceedings to be established by the department. The department shall, not later than 395 days after the complaint was filed, set a date for an administrative hearing in the case in accordance with the stipulated schedule. After a hearing date is set, the department may, in its sole discretion, issue a continuance of the hearing date only upon a showing of good cause.

(3) (a) The hearing must be held by the department in the county where the unlawful conduct is alleged to have occurred unless a party requests and is granted a change of venue for good cause shown. The case in support of the complaint may be presented before the department by the charging party or an attorney representing the charging party. The hearing must be held in accordance with the applicable portions of the Montana Rules of Civil Procedure.

(b) Upon request of the hearings officer, the department may present evidence with regard to activity conducted. However, except in cases brought pursuant to 42 U.S.C. 3601, et seq., the department may not represent either party in a contested case hearing.

(c) If the case is not settled, fully decided on order or motion, or otherwise resolved, after a hearing, the hearings officer shall issue a decision. If the decision is not appealed to the commission within 14 days as provided in subsection (4), the decision becomes final and is not appealable to district court.

(4) A party may appeal a decision of the hearings officer by filing an appeal with the commission within 14 days after the issuance of the notice of decision of the administrative hearing.

(5) The commission shall hear all appeals within 120 days of receipt of an appeal. The commission may affirm, reject, or modify the decision in whole or in part. The commission shall render a final agency decision within 90 days of hearing the appeal.

(6) All hearings conducted under this section may, upon stipulation of the parties, be heard telephonically.

(7) The department or the commission may make provisions for defraying the expenses of an indigent party in a hearing held pursuant to this chapter.

(8) The prevailing party in a hearing under this section may bring an action in district court for attorney fees and costs. The court in its discretion may allow the prevailing party reasonable attorney fees and costs. An action under this section must comply with the Montana Rules of Civil Procedure.

(9) Within 30 days after the commission issues a final agency decision in writing under subsection (5), a party may petition a district court for judicial review of the final agency decision as provided in 2-4-702.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(5), (6); amd. Sec. 9, Ch. 177, L. 1979; amd. Sec. 1, Ch. 709, L. 1979; amd. Sec. 10, Ch. 467, L. 1997; amd. Sec. 4, Ch. 28, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 28 in (1) at beginning of first sentence deleted "If the informal efforts to eliminate the alleged discrimination are unsuccessful" and near middle after "complaint" inserted "that is certified for hearing under 49-2-504 or that is remanded for hearing by the commission or by a reviewing court"; in (2) near beginning of first sentence after "agree to" substituted "extend the time for hearing beyond" for "permit the department to retain jurisdiction of the case under this chapter for a period of time that exceeds", at end of second sentence after "case" inserted "in accordance with the stipulated schedule", and at beginning of third sentence substituted "After a hearing date is set" for "The case must be heard no later than 90 days after the date is set by the department"; in (3)(a) in first sentence after "party" deleted "charged in the complaint", in second sentence in two places substituted "charging party" for "complainant", and in third sentence near beginning after "hearing" deleted "and any subsequent proceedings under this chapter" and at end after "Procedure" deleted "as adopted by the department"; inserted (3)(c) requiring issuance of a decision after a hearing if a case is not resolved; in (4) near beginning after "officer" substituted "by filing an appeal" for "to the commission. A party shall provide notice of its appeal" and after "commission" substituted "within 14 days after the issuance" for "the department, and all parties within 10 business days of receipt"; in (5) in first sentence near end after "receipt of" substituted "an" for "notice of", inserted second sentence allowing the commission to affirm, reject, or modify the decision in whole or in part, and in third sentence after "render a" inserted "final agency"; in (7) at beginning after "The" inserted "department or the" and near end after "in a" deleted "contested case"; in (8) at end of first and second sentences after "fees" inserted "and costs"; inserted (9) concerning petition for judicial review of a final agency decision; and made minor changes in style. Amendment effective July 1, 2007.

49-2-506. Procedure upon decision finding discrimination. (1) If the hearings officer finds that a party against whom a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the department shall order the party to refrain from engaging in the discriminatory conduct. The order may:

(a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against;

(c) require a report on the manner of compliance.

(2) Except as provided in 49-2-510, the order may not require the payment of punitive damages.

(3) Whenever an order or conciliation agreement requires inspection by the department for a period of time to determine if the respondent is complying with that order or agreement, the period of time may not be more than 1 year.

History: En. 64-309 by Sec. 6, Ch. 283, L. 1974; amd. Sec. 7, Ch. 524, L. 1975; R.C.M. 1947, 64-309(1), (2), (4); amd. Sec. 10, Ch. 177, L. 1979; amd. Sec. 5, Ch. 801, L. 1991; amd. Sec. 11, Ch. 467, L. 1997; amd. Sec. 5, Ch. 28, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 28 in (1) near beginning substituted "hearings officer" for "commission or the department, after a hearing" and near middle after "complaint" deleted "the commission or"; in (3) at beginning after "Whenever" substituted "an order" for "a commission or department order"; and made minor changes in style. Amendment effective July 1, 2007.

49-2-507. Repealed. Sec. 10, Ch. 28, L. 2007.

History: En. 64-309 by Sec. 6, Ch. 283, L. 1974; amd. Sec. 7, Ch. 524, L. 1975; R.C.M. 1947, 64-309(3); amd. Sec. 11, Ch. 177, L. 1979.

49-2-508. Enforcement of commission or department order or conciliation agreement. If the order issued under 49-2-506 is not obeyed, the commissioner, the department, or a party may petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's or department's order by any appropriate order. The commissioner, the department, or a party may also commence a civil action in an appropriate district court for relief for a breach of a conciliation agreement.

History: En. 64-310 by Sec. 7, Ch. 283, L. 1974; amd. Sec. 8, Ch. 524, L. 1975; R.C.M. 1947, 64-310; amd. Sec. 1, Ch. 539, L. 1985; amd. Sec. 12, Ch. 467, L. 1997; amd. Sec. 7, Ch. 28, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 28 near beginning of first and second sentences after "commissioner" inserted "the department"; and made minor changes in style. Amendment effective July 1, 2007.

49-2-509. Repealed. Sec. 10, Ch. 28, L. 2007.

History: En. Sec. 1, Ch. 505, L. 1983; amd. Sec. 1, Ch. 511, L. 1987; amd. Sec. 6, Ch. 801, L. 1991; amd. Sec. 13, Ch. 467, L. 1997.

49-2-510. Procedures and remedies for enforcement of housing discrimination laws. (1) A complaint may be filed with the department by or on behalf of a person claiming to be aggrieved by any discriminatory practice prohibited by 49-2-305. The complaint must be written and verified by the aggrieved person and must be filed with the department within 180 days after the alleged unlawful discriminatory practice occurred or was discovered.

(2) If in a hearing under 49-2-505 the department finds that a person against whom a complaint was filed under this part has engaged in a discriminatory practice in violation of 49-2-305, the department may, in addition to the remedies and injunctive and other equitable relief provided by 49-2-506, to vindicate the public interest, assess a civil penalty:

(a) in an amount not exceeding \$10,000 if the respondent has not been adjudged in any prior judicial or formal administrative proceeding to have committed any prior discriminatory housing practice in violation of 49-2-305; and

(b) in an amount not exceeding \$25,000 if the respondent has been adjudged in any prior judicial or formal administrative proceedings to have committed one or more similar discriminatory housing practices in repeated violation of 49-2-305 during the 5-year period ending on the date of the filing of the written complaint.

(3) In the case of a decision with respect to a discriminatory housing practice in violation of 49-2-305 that occurred in the course of a business subject to licensing or regulation by a governmental agency, the department shall, no later than 30 days after the date of the issuance of the order send a copy of the decision to the licensing or regulatory agency.

(4) (a) Following completion of the informal investigation of a complaint filed under 49-2-305, a charging party or a respondent may elect to have the claims decided in a civil action in lieu of a hearing under 49-2-505. The election must be made in writing no later than 30 days after the service of notice of hearing under 49-2-505 on the electing party. The election must give notice to the department and to all other parties named in the complaint. Within 30 days after the election is made, the charging party, the commissioner, or the aggrieved party may commence a civil action in an appropriate district court on behalf of the aggrieved party if the department has made a finding that the allegations of the complaint are supported by a preponderance of the evidence. If the department has made a finding that the allegations of the complaint are not supported by a preponderance of the evidence, the charging party may commence a civil action in an appropriate district court in accordance with subsection (5). An aggrieved party with respect to the issues to be determined in a civil action brought by the department may intervene in the action.

(b) The department may not continue administrative proceedings on a complaint after an election is made in accordance with subsection (4)(a). The charging party may commence a civil action in an appropriate district court in accordance with subsection (5). An aggrieved party with respect to issues to be determined in a civil action brought by the department may intervene in the action.

(5) (a) An aggrieved party may commence a civil action in an appropriate district court within 2 years after an alleged unlawful discriminatory practice under 49-2-305 occurred or was discovered or within 2 years of the breach of a conciliation agreement entered into under 49-2-504 in a case alleging a violation of 49-2-305. The computation of the 2-year period does not include any time during which an administrative proceeding under this title was pending with respect to a complaint alleging a violation of 49-2-305. The tolling of the time limit for commencing a civil action does not apply to actions arising from breach of a conciliation agreement.

(b) An aggrieved party may commence a civil action under this subsection (5) for a violation of 49-2-305 whether or not a complaint has been filed under 49-2-501 and without regard to the status of a complaint filed with the department, except as provided in subsection (5)(d). If the department has obtained a conciliation agreement with the consent of the aggrieved party, an action may not be filed under this subsection (5) by the aggrieved party regarding the alleged violation of 49-2-305 that forms the basis for the complaint except for the purpose of enforcing the terms of the agreement.

(c) The commission or the department may not continue administrative proceedings on a complaint after the filing of a civil action commenced by the aggrieved party under this subsection (5) seeking relief with respect to the same alleged violation of 49-2-305.

(d) An aggrieved party may not commence a civil action under this subsection (5) with respect to an alleged violation of 49-2-305 if the commission or the department has commenced a hearing on the record under 49-2-505 regarding the same complaint.

(e) Upon application by a person alleging a violation of 49-2-305 in a civil action under this subsection (5) or by a person against whom the violation is alleged, the court may:

(i) appoint an attorney for the applicant and the respondent; or

(ii) authorize the commencement or continuation of a civil action without the payment of fees, costs, or security if, in the opinion of the court, the party is financially unable to bear the costs of the civil action. As in all actions brought in forma pauperis, the burden of showing lack of financial ability rests with the party claiming financial hardship.

(6) If the court finds that a party against whom a complaint was filed under this section has been adjudicated in a civil or formal administrative proceeding to have engaged in a similar discriminatory practice in violation of 49-2-305, the court may, consistent with the provisions of subsection (2) of this section, award punitive damages. The court may also award attorney fees and costs to the substantively prevailing party.

(7) All civil damages and penalties, monetary or otherwise, awarded under this section to an organization that is not an aggrieved party must be deposited in the state general fund.

History: En. Sec. 2, Ch. 801, L. 1991; amd. Sec. 41, Ch. 422, L. 1997; amd. Sec. 14, Ch. 467, L. 1997; amd. Sec. 9, Ch. 28, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 28 in (1) in two places substituted "person" for "party"; in (2) at beginning after "If" deleted "the department, on appeal, or the commission", after "49-2-505" inserted "the department", after "that a" substituted "person" for "party", and near middle after "department" deleted "or the commission"; in (3) near beginning after "case of" substituted "a decision" for "an order", near middle after "agency, the" substituted "department" for "commission", and after "order" substituted "send a copy of the decision" for "or, if the order is judicially reviewed, no later than 30 days after the order is affirmed send copies of the findings of fact, the conclusions of law, and the order"; in (4)(a) at beginning of first sentence substituted "Following completion of the informal investigation of" for "When" and after "49-2-305, a" substituted "charging party" for "complainant", in second sentence near beginning after "made" inserted "in writing", after "later than" substituted "30 days after the service" for "20 days after receipt by the electing person of service", after "notice of" deleted "certification for", and at end after "49-2-505" inserted "on the electing party", in third sentence at beginning after "The" deleted "person making the", after "all" deleted "complainants and", and after "other" substituted "parties" for "respondents", and in fourth and fifth sentences substituted "charging party" for "complainant"; in (4)(b) inserted second and third sentences regarding commencement of a civil action and allowing an aggrieved party to intervene in the action; in (6) in second sentence after "fees" inserted "and costs"; in (7) at beginning substituted "All civil damages and penalties, monetary or otherwise, awarded under this section to an organization that is not an aggrieved party" for "Except as provided in subsection (7)(b), all civil and administrative penalties and other revenue generated under this part"; deleted former (7)(b) that read: "(b) Damages or penalties, whether monetary or otherwise, may not inure to an organization unless the organization is an aggrieved party. This section does not affect any amount owed to an aggrieved party"; and made minor changes in style. Amendment effective July 1, 2007.

49-2-511. Dismissal after informal proceedings — filing of objections — procedures — action in district court. (1) If the department, after the informal

investigation, issues a notice of dismissal under 49-2-501(5) or 49-2-504(7)(b), a charging party may file objections to the dismissal with the commission. The objections must be filed with the commission within 14 days after the issuance of the notice of dismissal.

(2) (a) The commission shall consider the objection in an informal hearing and review the department's findings for an abuse of discretion.

(b) If the commission overrules the objection, it shall issue its order affirming the department's notice of dismissal.

(c) If the commission sustains the objection, it shall reopen the case by remanding it to the department.

(3) (a) Within 90 days after the department has issued a notice of dismissal pursuant to 49-2-501(5) or 49-2-504(7)(b) or within 90 days after the commission has issued an order affirming the department's notice of dismissal pursuant to subsection (2)(b) of this section, the charging party may commence a civil action for appropriate relief on the merits of the case in the district court in the district in which the alleged violation occurred. If the charging party fails to commence the civil action in the district court within 90 days after the final agency decision has been issued, the claim is barred. The court may provide the same relief as described in 49-2-506. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees and costs.

(b) Within 30 days after the commission issues an order affirming the department's notice of dismissal pursuant to subsection (2)(b), a party may petition a district court for judicial review of the final agency decision as provided in 2-4-604.

History: En. Sec. 6, Ch. 28, L. 2007.

Compiler's Comments

Effective Date: Section 12, Ch. 28, L. 2007, provided: "[This act] is effective July 1, 2007."

49-2-512. Filing in district court — compliance with administrative procedures required. (1) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of chapter 3 or this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. A claim or request for relief based upon the acts may not be entertained by a district court other than by the procedures specified in this chapter.

(2) In addition to dismissal under 49-2-501(5) or 49-2-504(7)(b), the department shall dismiss a complaint if:

(a) the charging party fails to keep the department advised of changes of address and the department finds that the failure has impeded the administrative proceedings; or

(b) a period of 12 months has elapsed from the filing of a complaint and neither the department nor the commission has held a hearing pursuant to 49-2-505 or an informal hearing pursuant to 49-2-511. However, the department or the commission may refuse to dismiss a complaint under this subsection (2)(b) if:

(i) more than 30 days have elapsed since service of notice of hearing under 49-2-505;

(ii) the parties have stipulated to a reasonable extension of the timeframes; or

(iii) through litigation a party has unsuccessfully sought to prevent the department or the commission from conducting administrative proceedings on the complaint.

(3) Within 90 days after the department has issued a notice of dismissal pursuant to subsection (2), the charging party may commence a civil action for appropriate relief on the merits of the case in the district court in the district in which the alleged violation occurred. If the charging party fails to commence a civil action within 90 days after the dismissal has been issued, the claim is barred. The court may provide the same relief as described in 49-2-506. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees and costs.

History: En. Sec. 8, Ch. 28, L. 2007.

Compiler's Comments

Effective Date: Section 12, Ch. 28, L. 2007, provided: "[This act] is effective July 1, 2007."

Part 6 Penalties

49-2-601. Criminal penalty. A person, educational institution, or financial institution, either public or private, or a governmental entity or agency who or which willfully engages in an unlawful discriminatory practice prohibited by this chapter or willfully resists, prevents, impedes, or interferes with the commission, the department, or any of its authorized representatives in the performance of a duty under this chapter or who or which willfully violates an order of the commission or willfully violates this chapter in any other manner is guilty of a misdemeanor and is punishable by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both.

History: En. 64-312 by Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; R.C.M. 1947, 64-312(3); amd. Sec. 12, Ch. 177, L. 1979.

49-2-602. Intimidation or interference in right to be free from housing discrimination — penalties. (1) It is unlawful for a person, whether or not acting under color of law, by force or threat of force to purposefully or knowingly injure, intimidate, or interfere with or attempt to injure, intimidate, or interfere with:

(a) a person because of sex, race, creed, religion, age, familial status, physical or mental disability, color, or national origin and because the person is or has been:

(i) selling, purchasing, renting, leasing, financing, or occupying or contracting or negotiating for the sale, purchase, lease, rental, financing, or occupation of any housing accommodation or property; or

(ii) applying for or participating in any service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property;

(b) a person because that person is or has been:

(i) participating, without discrimination because of sex, race, creed, religion, age, familial status, physical or mental disability, color, or national origin in any of the activities, services, organizations, or facilities described in this subsection (1); or

(ii) affording another person or class of persons opportunity or protection to participate in those activities, services, organizations, or facilities; or

(c) a citizen because the citizen is or has been, or in order to discourage that citizen or any other citizen from, lawfully aiding or encouraging other persons to participate in any of the activities, services, organizations, or facilities described in this subsection (1) or because the citizen is or has been lawfully participating in speech or peaceful assembly opposing any denial of the opportunity to participate.

(2) A person who violates a provision of subsection (1):

(a) shall be fined not more than \$1,000 or imprisoned for not more than 1 year, or both;

(b) if bodily injury results, shall be fined not more than \$10,000 or imprisoned for not more than 10 years, or both; or

(c) if death results, shall be subject to imprisonment for any term of years or for life.

History: En. Sec. 9, Ch. 801, L. 1991; amd. Sec. 10, Ch. 407, L. 1993.

CHAPTER 3 GOVERNMENTAL CODE OF FAIR PRACTICES

Part 1 General Provisions

49-3-101. Definitions. As used in this chapter, the following definitions apply:

(1) “Age” means number of years since birth. It does not mean level of maturity or ability to handle responsibility, which may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) “Commission” means the commission for human rights provided for in 2-15-1706.

(3) (a) “Physical or mental disability” means:

(i) a physical or mental impairment that substantially limits one or more of a person’s major life activities;

- (ii) a record of such an impairment; or
- (iii) a condition regarded as such an impairment.

(b) Discrimination based upon, because of, on the basis of, on the grounds of, or with regard to physical or mental disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental disability. Any accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

(4) "State or local governmental agency" means:

(a) any branch, department, office, board, bureau, commission, agency, university unit, college, or other instrumentality of state government; or

(b) a county, city, town, school district, or other unit of local government and any instrumentality of local government.

(5) "Qualifications" means qualifications that are genuinely related to competent performance of the particular occupational task.

History: (1)En. 64-316 by Sec. 1, Ch. 487, L. 1975; Sec. 64-316, R.C.M. 1947; (2)En. 64-319 by Sec. 4, Ch. 487, L. 1975; amd. Sec. 11, Ch. 38, L. 1977; Sec. 64-319, R.C.M. 1947; R.C.M. 1947, 64-316, 64-319(part); amd. Sec. 13, Ch. 177, L. 1979; amd. Sec. 1, Ch. 540, L. 1983; amd. Sec. 2, Ch. 241, L. 1991; amd. Sec. 11, Ch. 407, L. 1993.

49-3-102. What local governmental units affected. Local governmental units affected by this chapter include all political subdivisions of the state, including school districts.

History: En. 64-327 by Sec. 12, Ch. 487, L. 1975; R.C.M. 1947, 64-327.

49-3-103. Permitted distinctions. (1) Nothing in this chapter prohibits any public employer:

(a) from enforcing a differentiation based on marital status, age, or physical or mental disability when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;

(b) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, that is not a subterfuge to evade the purposes of this chapter, except that an employee benefit plan may not excuse the failure to hire any individual;

(c) from discharging or otherwise disciplining an individual for good cause; or

(d) from providing greater or additional contributions to a bona fide group insurance plan for employees with dependents than to those employees without dependents or with fewer dependents.

(2) The application of an employment preference as provided for in 2-18-111, 10-2-402, 18-1-110, and Title 39, chapter 29 or 30, by a public employer as defined in 39-29-101 and 39-30-103 may not be construed to constitute a violation of this chapter.

History: En. 64-328 by Sec. 13, Ch. 487, L. 1975; R.C.M. 1947, 64-328; amd. Sec. 2, Ch. 279, L. 1983; (2) En. Sec. 13, Ch. 1, Sp. L. 1983; amd. Sec. 16, Ch. 646, L. 1989; amd. Sec. 5, Ch. 506, L. 1991; amd. Sec. 6, Ch. 13, L. 1993; amd. Sec. 12, Ch. 407, L. 1993.

49-3-104. Quotas not required. Nothing in this chapter shall be construed as requiring the institution of a system of quotas for representation of any sex, age, religious, racial, ethnic, or other group affected by this chapter.

History: En. 64-330 by Sec. 15, Ch. 487, L. 1975; R.C.M. 1947, 64-330.

49-3-105. Repealed. Sec. 11, Ch. 801, L. 1991.

History: En. Sec. 4, Ch. 540, L. 1983.

49-3-106. Rulemaking authority. The commission may adopt rules necessary for the implementation of this chapter, in accordance with the Montana Administrative Procedure Act. The rules may include but are not limited to procedural rules for:

- (1) filing of complaints;
- (2) conducting investigations of complaints;
- (3) petitioning for a declaratory ruling; and
- (4) conduct of hearings.

History: En. Sec. 2, Ch. 540, L. 1983; amd. Sec. 7, Ch. 801, L. 1991.

Part 2

Duties of Governmental Agencies and Officials

49-3-201. Employment of state and local government personnel. (1) State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

(2) All state and local governmental agencies shall:

(a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state and local government;

(b) regularly review their personnel practices to assure compliance; and

(c) conduct continuing orientation and training programs with emphasis on human relations and fair employment practices.

(3) The department of administration shall ensure that the entire examination process, including appraisal of qualifications, is free from bias.

(4) Appointing authorities shall exercise care to ensure utilization of minority group persons.

(5) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

History: En. 64-317 by Sec. 2, Ch. 487, L. 1975; amd. Sec. 9, Ch. 38, L. 1977; R.C.M. 1947, 64-317; amd. Sec. 14, Ch. 177, L. 1979; amd. Sec. 3, Ch. 342, L. 1985; amd. Sec. 13, Ch. 407, L. 1993.

49-3-202. Employment referrals and placement services. (1) All state and local governmental agencies, including educational institutions, that provide employment referrals or placement services to public or private employers shall accept job orders on a fair practice basis. A job request indicating an intention to exclude a person because of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin must be rejected.

(2) All state and local governmental agencies shall cooperate in programs developed by the commission for human rights for the purpose of broadening the base of job recruitment and shall further cooperate with employers and unions providing the programs.

(3) The department of labor and industry shall cooperate with the commission for human rights in encouraging and enforcing compliance by employers and labor unions with the policy of this chapter and promotion of equal employment opportunities.

History: En. 64-320 by Sec. 5, Ch. 487, L. 1975; amd. Sec. 12, Ch. 38, L. 1977; R.C.M. 1947, 64-320; amd. Sec. 14, Ch. 407, L. 1993.

49-3-203. Educational, counseling, and training programs. All educational, counseling, and vocational guidance programs and all apprenticeship and on-the-job training programs of state and local governmental agencies or in which state and local governmental agencies participate must be open to all persons, who must be accepted on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin. The programs must be conducted to encourage the full development of the interests, aptitudes, skills, and capacities of all students and trainees, with special attention to the problems of persons who are culturally deprived or who are educationally or economically disadvantaged. Expansion of training opportunities under these programs must be encouraged to involve larger numbers of participants from those segments of the labor force in which the need for upgrading levels of skill is greatest.

History: En. 64-323 by Sec. 8, Ch. 487, L. 1975; amd. Sec. 14, Ch. 38, L. 1977; R.C.M. 1947, 64-323; amd. Sec. 15, Ch. 177, L. 1979; amd. Sec. 15, Ch. 407, L. 1993.

49-3-204. Licensing. (1) A state or local governmental agency may not grant, deny, or revoke the license or charter of a person on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin. Each state or local governmental agency shall take appropriate action in the exercise of its licensing or regulatory power as will assure equal treatment of all persons, eliminate discrimination, and enforce compliance with the policy of this chapter. This subsection does not prevent the department of public health and human services from licensing a child-placing agency that gives

nonarbitrary consideration in adoption proceedings to relevant information concerning the factors listed in this subsection. Consideration of religious factors by a licensed child-placing agency that is affiliated with a particular religious faith is not arbitrary consideration of religion within the meaning of this section.

(2) The state may not issue or renew a license under Title 16, chapter 4, to an applicant or licensee that excludes from its membership or from its goods, services, facilities, privileges, or advantages any individual on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization.

History: En. 64-321 by Sec. 6, Ch. 487, L. 1975; amd. Sec. 13, Ch. 38, L. 1977; R.C.M. 1947, 64-321; amd. Sec. 16, Ch. 177, L. 1979; amd. Sec. 3, Ch. 543, L. 1989; amd. Sec. 4, Ch. 682, L. 1991; amd. Sec. 16, Ch. 407, L. 1993; amd. Sec. 235, Ch. 546, L. 1995.

49-3-205. Governmental services. (1) All services of every state or local governmental agency must be performed without discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

(2) A state or local facility may not be used in the furtherance of any discriminatory practice, nor may a state or local governmental agency become a party to an agreement, arrangement, or plan that has the effect of sanctioning discriminatory practices.

(3) Each state or local governmental agency shall analyze all of its operations to ascertain possible instances of noncompliance with the policy of this chapter and shall initiate comprehensive programs to remedy any defect found to exist.

(4) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in this section.

History: En. 64-318 by Sec. 3, Ch. 487, L. 1975; amd. Sec. 10, Ch. 38, L. 1977; R.C.M. 1947, 64-318; amd. Sec. 17, Ch. 177, L. 1979; amd. Sec. 5, Ch. 682, L. 1991; amd. Sec. 17, Ch. 407, L. 1993.

49-3-206. Distribution of governmental funds. Race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin may not be considered as limiting factors with regard to applicants' qualifications for benefits authorized by law in state or locally administered programs involving the distribution of funds; nor may state agencies provide grants, loans, or other financial assistance to public agencies, private institutions, or organizations which engage in discriminatory practices.

History: En. 64-324 by Sec. 9, Ch. 487, L. 1975; amd. Sec. 15, Ch. 38, L. 1977; R.C.M. 1947, 64-324; amd. Sec. 18, Ch. 407, L. 1993.

49-3-207. Nondiscrimination provision in all public contracts. Every state or local contract or subcontract for construction of public buildings or for other public work or for goods or services must contain a provision that all hiring must be on the basis of merit and qualifications and a provision that there may not be discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

History: En. 64-319 by Sec. 4, Ch. 487, L. 1975; amd. Sec. 11, Ch. 38, L. 1977; R.C.M. 1947, 64-319(part); amd. Sec. 18, Ch. 177, L. 1979; amd. Sec. 19, Ch. 407, L. 1993.

49-3-208. Public accommodations laws. No state or local governmental agency may permit any violation of the public accommodations provisions of 49-2-304.

History: En. 64-322 by Sec. 7, Ch. 487, L. 1975; R.C.M. 1947, 64-322; amd. Sec. 19, Ch. 177, L. 1979.

49-3-209. Retaliation prohibited. It is an unlawful discriminatory practice for a state or local governmental agency to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

History: En. Sec. 3, Ch. 540, L. 1983.

Part 3 Enforcement and Remedies

49-3-301. Cooperation with commission for human rights. All state and local governmental agencies shall cooperate with the commission for human rights in the

commission's enforcement and educational programs. They shall comply with the commission's requests for information concerning practices inconsistent with the state policy against discrimination and shall consider its recommendations for effectuating and implementing that policy. The commission shall continue to augment its enforcement and educational programs which seek to eliminate all discrimination.

History: En. 64-325 by Sec. 10, Ch. 487, L. 1975; R.C.M. 1947, 64-325; amd. Sec. 20, Ch. 177, L. 1979.

49-3-315. Enforcement and remedies. The procedures set forth in chapter 2, part 5, apply to complaints alleging a violation of this chapter.

History: En. Sec. 16, Ch. 467, L. 1997.

CHAPTER 4 RIGHTS OF PERSONS WITH DISABILITIES

Part 1 Discrimination in Employment

49-4-101. Discrimination prohibited. It is unlawful to discriminate, in hiring or employment, against a person because of the person's physical disability. There is no discrimination when the nature or extent of the disability reasonably precludes the performance of the particular employment or when the particular employment may subject the person with a disability or that person's fellow employees to physical harm.

History: En. Sec. 3, Ch. 77, L. 1974; R.C.M. 1947, 64-304(part); amd. Sec. 20, Ch. 407, L. 1993.

49-4-102. Penalty and civil remedy. A person who practices discrimination in violation of 49-4-101 commits a misdemeanor and is also liable in a district court action for civil damages and attorney's fees by the person discriminated against. Should the person who allegedly practiced discrimination prevail in the civil action, he shall be entitled to recover reasonable attorney's fees from the person who alleged the discrimination.

History: En. Sec. 3, Ch. 77, L. 1974; R.C.M. 1947, 64-304(part).

Part 2 Rights of the Physically Disabled

49-4-201. Repealed. Sec. 11, Ch. 239, L. 1983.

History: En. Sec. 1, Ch. 181, L. 1971; R.C.M. 1947, 71-1303.

49-4-202. Policy of the state. It is the policy of the state to encourage and enable the blind, the visually impaired, the deaf, and the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment. The blind, the visually impaired, the deaf, and the otherwise physically disabled must be employed in the state service, the service of the political subdivisions of the state, the public schools, and all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved.

History: En. Sec. 2, Ch. 181, L. 1971; R.C.M. 1947, 71-1304; amd. Sec. 1, Ch. 176, L. 1981; amd. Sec. 21, Ch. 407, L. 1993.

49-4-203. Definitions. (1) "Housing accommodation" means any real property or portion of real property that is used or occupied or is intended, arranged, or designed to be used or occupied as the home, residence, or sleeping place of one or more human beings. The term does not include any single-family residence the occupants of which furnish for compensation not more than one room within the residence.

(2) "Service animal" means a dog or other animal individually trained to provide assistance to an individual with a disability.

History: En. 71-1305.1 by Sec. 5, Ch. 266, L. 1975; amd. Sec. 2, Ch. 35, L. 1977; R.C.M. 1947, 71-1305.1(2); amd. Sec. 1, Ch. 394, L. 1997.

49-4-204 through 49-4-210 reserved.

49-4-211. Right to use public places and accommodations. (1) The blind, the visually impaired, and the deaf have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

(2) The blind, the visually impaired, and the deaf are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, as defined in 69-11-101, and all public accommodations, as defined in 49-2-101, subject only to the conditions and limitations established by law and applicable alike to all persons.

History: En. Sec. 3, Ch. 181, L. 1971; amd. Sec. 1, Ch. 266, L. 1975; R.C.M. 1947, 71-1305(2), (3); amd. Sec. 22, Ch. 177, L. 1979; amd. Sec. 2, Ch. 176, L. 1981; amd. Sec. 22, Ch. 407, L. 1993.

49-4-212. Access to housing accommodations. Blind, visually impaired, and deaf persons are entitled to as full and equal access as other members of the general public to any housing accommodation offered for compensation in this state.

History: En. 71-1305.1 by Sec. 5, Ch. 266, L. 1975; amd. Sec. 2, Ch. 35, L. 1977; R.C.M. 1947, 71-1305.1(1), (3); amd. Sec. 3, Ch. 176, L. 1981; amd. Sec. 10, Ch. 801, L. 1991; amd. Sec. 23, Ch. 407, L. 1993.

49-4-213. Use of white or metallic-colored canes restricted to the blind. No person, except those wholly or partially blind, shall carry or use on any street or highway or in any other public place a cane or walking stick which is white or metallic in color or white or metallic tipped with red.

History: En. Sec. 3, Ch. 181, L. 1971; amd. Sec. 1, Ch. 266, L. 1975; R.C.M. 1947, 71-1305(1).

49-4-214. Right to be accompanied by service animal — identification for service animals in training. (1) A person with a disability has the right to be accompanied by a service animal or a service animal in training with identification complying with subsection (4) in any of the places mentioned in 49-4-211(2) without being charged extra for the service animal. The person with a disability is liable for any damage done to the property by the animal.

(2) A person with a disability who has a service animal or who obtains a service animal is entitled to full and equal access to all housing accommodations as provided in 49-2-305 and 49-4-212. The person with a disability may not be required to pay extra compensation for the service animal but is liable for any damage done to the premises by the service animal.

(3) A person who is training a service animal is entitled to the same rights and assumes the same responsibilities granted to a person with a disability in this section.

(4) For the purposes of this section, a service animal in training that is a dog shall wear a leash, collar, cape, harness, or backpack that identifies in writing that the dog is a service animal in training. Other service animals in training must also be identifiable by written identification as a service animal in training. The written identification for service animals in training must be visible and legible from a distance of at least 20 feet.

History: En. Sec. 4, Ch. 181, L. 1971; amd. Sec. 2, Ch. 266, L. 1975; R.C.M. 1947, 71-1306; amd. Sec. 23, Ch. 177, L. 1979; amd. Sec. 4, Ch. 176, L. 1981; amd. Sec. 2, Ch. 394, L. 1997.

49-4-215. Penalty for violating rights. Any person, firm, or corporation or the agent of any person, firm, or corporation who denies or interferes with admittance to or enjoyment of the public facilities enumerated in 49-4-211 or otherwise interferes with the rights of a totally or partially blind, deaf, or otherwise disabled person under 49-4-211 is guilty of a misdemeanor.

History: En. Sec. 4, Ch. 266, L. 1975; R.C.M. 1947, 71-1309; amd. Sec. 5, Ch. 176, L. 1981.

49-4-216. Duty and civil liability of pedestrian or driver approaching blind person. (1) A pedestrian who is not totally or partially blind or a driver of a vehicle who approaches or comes in contact with a person who is totally or partially blind and is carrying a cane or walking stick predominately white or metallic in color or white tipped with red or is being led by a trained guide dog wearing a harness and walking on either side of or slightly in front of such blind person shall immediately come to a full stop and take such precautions before proceeding as may be necessary to avoid accident or injury to such blind person.

(2) A driver or pedestrian who fails to take such precautions is liable in damages for any injury caused the totally or partially blind person. A totally or partially blind pedestrian who is not carrying such a cane or using a guide dog in any of the places listed in 49-4-211 has all of the rights and privileges conferred by law upon other persons, and the failure of such a pedestrian to

carry such a cane or to use a guide dog in any such place may not be held to constitute or be evidence of contributory negligence.

History: En. Sec. 5, Ch. 181, L. 1971; amd. Sec. 3, Ch. 266, L. 1975; R.C.M. 1947, 71-1307; amd. Sec. 24, Ch. 177, L. 1979.

49-4-217. Penalty for violation of duty or unauthorized use of cane. Any person other than a person wholly or partially blind who shall carry a cane or walking stick such as is described in this part, contrary to the provisions of this part, or who shall fail to heed the approach of a person carrying such a cane as is described by this part or who shall fail to come to a full stop when approaching or coming in contact with a person so carrying such a cane or walking stick or being led by a trained guide dog or who shall fail to take precaution against accidents or injury to such person after coming to a stop, as provided for herein, is guilty of a misdemeanor punishable by a fine not to exceed \$25.

History: En. Sec. 6, Ch. 181, L. 1971; R.C.M. 1947, 71-1308.

Part 3 Special Parking Permits Motorized Wheelchairs

49-4-301. Eligibility for special parking permit. (1) The department of justice shall issue a special parking permit to a person who has a disability that limits or impairs the person's mobility and for whom a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse, as provided in 37-8-202, submits a certification to the department, by electronic or other means prescribed by the department, that the person meets one of the following criteria:

- (a) cannot walk 200 feet without stopping to rest;
- (b) is severely limited in ability to walk because of an arthritic, neurological, or orthopedic condition;
- (c) is so severely disabled that the person cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;
- (d) uses portable oxygen;
- (e) is restricted by lung disease to the extent that forced expiratory respiratory volume, when measured by spirometry, is less than 1 liter per second or the arterial oxygen tension is less than 60 mm/hg on room air at rest;
- (f) has impairment because of cardiovascular disease or a cardiac condition to the extent that the person's functional limitations are classified as class III or IV under standards accepted by the American heart association; or
- (g) has a disability resulting from an acute sensitivity to automobile emissions or from another disease or physical condition that limits or impairs the person's mobility and that is documented by the licensed physician, the licensed chiropractor, or the licensed advanced practice registered nurse as being comparable in severity to the other conditions listed in this subsection (1).

(2) (a) A person who has a condition expected to improve within 6 months may be issued a temporary placard for a period not to exceed 6 months but may not be issued a special license plate under 61-3-332(9). If the condition exists after 6 months, a new temporary placard must be issued for the time period prescribed by the applicant's physician, chiropractor, or advanced practice registered nurse, not to exceed 24 months, upon receipt of a later paper or electronic certification from the disabled person's physician, chiropractor, or advanced practice registered nurse that the conditions specified in subsection (1) continue to exist and are expected to continue for the time specified.

(b) A person who meets one of the criteria in subsection (1) for what is considered to be a permanent condition, as determined by a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse, may, by application to the department, by electronic or other means prescribed by the department, be issued a special license plate under 61-3-332(9) and is not required to reapply for the special license plate when the vehicle is reregistered.

(3) The department of justice may issue special parking permits to an agency or business that provides transportation as a service for persons with a disability. The permits must be used only to load and unload persons with a disability in the special parking place provided for in 49-4-302. As used in this subsection, “disability” means a physical impairment that severely limits a person’s ability to walk.

(4) Except as provided in subsection (3), an applicant may not receive more than one permit.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(1), (6); amd. Sec. 1, Ch. 614, L. 1983; amd. Sec. 24, Ch. 407, L. 1993; amd. Sec. 1, Ch. 202, L. 1995; amd. Sec. 1, Ch. 392, L. 1995; amd. Sec. 1, Ch. 280, L. 1997; amd. Sec. 1, Ch. 156, L. 1999; amd. Sec. 7, Ch. 399, L. 2003; amd. Secs. 1, 3, Ch. 507, L. 2005; amd. Sec. 28, Ch. 596, L. 2005.

49-4-302. Privileges of permitholder — privilege for disabled veteran — exemptions from time limits — requirements for special parking spaces. (1) The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in a special parking space reserved for a person with a disability, whether on public property or on private property available for public use, when the person for whom the permit was issued is using the special parking space to enter or exit the vehicle.

(2) A vehicle may not be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by a person with a disability unless:

(a) the vehicle is lawfully displaying a parking permit issued under this part, a distinguishing license plate or placard for a person with a disability that was issued by a foreign jurisdiction conferring parking privileges similar to those conferred in subsection (1), or a specially inscribed license plate displaying the letters “DV” issued under 61-3-458(3)(b) or (3)(i) or displaying a wheelchair as provided in 61-3-332(9); and

(b) the reserved parking space is being used by the person for whom the permit, plate, or placard was issued to enter or exit the vehicle.

(3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part and vehicles lawfully displaying specially inscribed license plates displaying the letters “DV” issued under 61-3-458(3)(b) or (3)(i) or displaying a wheelchair as provided in 61-3-332(9) and parked in public places along public streets from any time limitation imposed upon parking, except in areas where:

(a) stopping, standing, or parking of all vehicles is prohibited;

(b) only special vehicles may be parked; or

(c) parking is not allowed during specific periods of the day in order to accommodate heavy traffic.

(4) In accordance with subsection (2), the governing body of a city, town, or county or appropriate state agency may impose all, but not less than all, of the following requirements with respect to any special parking space constructed after September 30, 1985, and reserved for a person with a disability or a permitholder on ways of this state open to the public, as defined in 61-8-101:

(a) The space must be located on a smooth, level surface as near as practicable to building entrances or walkways that have curb cuts and appropriately designed ramps and access lanes to accommodate wheelchairs.

(b) If parallel to curbside, the parking space must be separated from an adjacent space, either in the front or the rear, by at least 5 feet of striped no-parking area.

(c) If at an angle to curbside, the parking space must be at least 8 feet wide and free of obstruction if located at the end of a line of angle parking spaces, and each other angle parking space designated for a person with a disability must be at least 13 feet wide.

(d) A parking space reserved for a person with a disability must be designated by a sign showing the international symbol of accessibility, indicating that a permit is required, and stating the penalty for a violation. In order to meet the penalty statement requirement, signs existing on October 1, 1993, must have attached a decal stating the penalty for a violation. The sign must be attached to a wall or post in a way that it is not obscured by a vehicle parked in the space.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(2); amd. Sec. 2, Ch. 614, L. 1983; amd. Sec. 2, Ch. 71, L. 1985; amd. Sec. 1, Ch. 203, L. 1985; amd. Sec. 1, Ch. 616, L. 1985; amd. Sec. 1, Ch. 187, L. 1987; amd. Sec. 17, Ch. 724, L. 1991; amd. Sec. 1, Ch. 209, L. 1993; amd. Sec. 3, Ch. 406, L. 1993; amd. Sec. 25, Ch.

407, L. 1993; amd. Sec. 2, Ch. 392, L. 1995; amd. Sec. 2, Ch. 489, L. 1995; amd. Sec. 1, Ch. 539, L. 2001; amd. Sec. 8, Ch. 399, L. 2003; amd. Sec. 29, Ch. 596, L. 2005; amd. Sec. 1, Ch. 59, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 59 in (2)(a) and (3) after "61-3-458(3)(b)" inserted "or (3)(i)". Amendment effective October 1, 2007.

49-4-303. Issuance of interim special parking permit. A licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse, as provided in 37-8-202, may issue an interim special parking permit, in a form authorized by the department, to a person who has a disability that limits or impairs the person's mobility and upon whose behalf the physician, chiropractor, or advanced practice registered nurse has submitted a request for a special parking permit under 49-4-301. The interim special parking permit is valid only in Montana, may not be renewed or extended, and expires 5 days from the date of issuance.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(4), (5); amd. Sec. 2, Ch. 280, L. 1997; amd. Sec. 2, Ch. 156, L. 1999; amd. Sec. 30, Ch. 596, L. 2005.

49-4-304. Special license plate or card to be provided and displayed — additional cards allowed for owners of more than one vehicle. (1) Except as authorized in 49-4-303, unless the department of justice issued a special license plate under 61-3-332(9) or 61-3-458(3)(b) or (3)(i) indicating a special parking privilege, the department shall provide a card to be displayed on or in a motor vehicle to indicate a parking privilege granted under this part. The special license plate must be affixed to the vehicle according to 61-3-301, or the card must be prominently displayed in the windshield of a vehicle when the parking privilege is being used by the person with a disability in a vehicle other than the one to which a special license plate is affixed.

(2) Subject to the provisions of 49-4-301 through 49-4-305, a person who is eligible to receive a special parking permit and who owns more than one motor vehicle may request and the department of justice shall provide additional cards described in subsection (1) to equal the number of motor vehicles, other than commercial vehicles, owned by the person.

(3) Upon application under 49-4-301, a person with a disability who does not hold a driver's license or does not own a vehicle may receive a card described in subsection (1) to be displayed in a vehicle in which the person with a disability is being conveyed when the parking privilege is being used.

(4) The card must bear a representation of a wheelchair as the symbol of a person with a disability.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(3); amd. Sec. 3, Ch. 614, L. 1983; amd. Sec. 4, Ch. 159, L. 1985; amd. Sec. 1, Ch. 456, L. 1991; amd. Sec. 17, Ch. 724, L. 1991; amd. Sec. 26, Ch. 407, L. 1993; amd. Sec. 3, Ch. 489, L. 1995; amd. Sec. 9, Ch. 399, L. 2003; amd. Sec. 31, Ch. 596, L. 2005; amd. Sec. 2, Ch. 59, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 59 in (1) near middle of first sentence after "61-3-458(3)(b)" inserted "or (3)(i)". Amendment effective October 1, 2007.

49-4-305. Expiration of permit. (1) Except as provided in 49-4-303 and subsection (2) of this section, a special parking permit expires on the occurrence of either of the following:

(a) 3 years from the date of issuance, unless the permit was issued to a person who has a condition expected to improve within 6 months. A person may renew a permit if a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse, as provided in 37-8-202, certifies that the person's mobility disability still exists and that one of the criteria specified in 49-4-301 continues to be met.

(b) certification by a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse that the person's mobility disability no longer exists or that the criteria specified in 49-4-301 can no longer be met.

(2) A permit issued before October 1, 1993, expires on:

(a) the death of the permittee; or

(b) certification by a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse that the person's mobility disability no longer exists or that the criteria specified in 49-4-301 can no longer be met.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(7); amd. Sec. 4, Ch. 614, L. 1983; amd. Sec. 4, Ch. 406, L. 1993; amd. Sec. 27, Ch. 407, L. 1993; amd. Sec. 3, Ch. 392, L. 1995; amd. Sec. 3, Ch. 280, L. 1997; amd. Sec. 3, Ch. 156, L. 1999; amd. Sec. 32, Ch. 596, L. 2005.

49-4-306. Department of justice to publicize permit. (1) The department of justice shall publicize the provisions of 49-4-301 through 49-4-305 in a manner designed to inform those eligible for a special parking permit.

(2) The department of justice shall budget sufficient funds to accomplish the requirements of subsection (1).

History: En. Sec. 1, Ch. 32, L. 1981.

49-4-307. Penalty. A person who parks a motor vehicle in violation of 49-4-302(2) is guilty of a misdemeanor and is punishable by a fine of \$100. However, a person charged with violating 49-4-302(2) may not be convicted if within 24 hours the person produces in court or the office of the arresting officer a special parking permit that was previously issued to the person and that is valid at the time of arrest.

History: En. Sec. 6, Ch. 614, L. 1983; amd. Sec. 2, Ch. 187, L. 1987; amd. Sec. 5, Ch. 406, L. 1993.

49-4-308 and 49-4-309 reserved.

49-4-310. Special parking permit for long-term care facility. A long-term care facility, as defined in 37-9-101, may apply for a permit issued for special parking spaces under 49-4-302. If granted, the permit entitles the facility to the privileges granted in 49-4-302.

History: En. Sec. 3, Ch. 187, L. 1987.

Part 5

Interpreters for the Deaf in Official Proceedings

49-4-501. Policy. It is the policy of this state to secure the constitutional rights of deaf persons who, because of impairment of hearing or speech, are unable to readily understand or communicate spoken language and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

History: En. Sec. 1, Ch. 245, L. 1979.

49-4-502. Definitions. As used in this part, the following definitions apply:

(1) "Appointing authority" means the presiding judge or justice of any court, the chairman of any board, commission, or authority, the director or commissioner of any department or agency, or any other person presiding at any hearing or other proceeding in which a qualified interpreter is required pursuant to this part.

(2) "Deaf person" means a person whose hearing is totally impaired or whose hearing is so seriously impaired as to prohibit the person from understanding oral communications. The term further includes, but is not limited to, a person who, because of loss of hearing, cannot communicate spoken language.

(3) "Intermediary interpreter" means a knowledgeable deaf person who, because of the person's intimate acquaintance with deaf persons who use mainly natural gestures for communicating, can be used as an intermediary between the deaf person and a qualified interpreter.

(4) "Principal party in interest" means a person who is a named party in any proceeding or who will be directly affected by the decision or action which may be made or taken.

(5) "Qualified interpreter" means an interpreter listed by the department of public health and human services as provided in 49-4-507.

History: En. Sec. 2, Ch. 245, L. 1979; amd. Sec. 236, Ch. 546, L. 1995.

49-4-503. Deaf person as participant in judicial or administrative proceeding — interpreter to be used. A qualified interpreter shall be appointed as follows:

(1) In any case before any court or a grand jury in which a deaf person is a party, either as a complainant, defendant, or witness, the court shall appoint a qualified interpreter to interpret the proceedings to the deaf person and interpret his testimony or statements and to assist in preparation with counsel.

(2) At all stages in any proceeding of a judicial or quasi-judicial nature before any agency of the state or governing body or agency of a local government in which a deaf person is a principal

party in interest, either as a complainant, defendant, witness, or supplicant, the agency or governing body shall appoint a qualified interpreter to interpret the proceedings to the deaf person and to interpret his testimony or statements.

(3) (a) In any proceedings in which a deaf person may be subjected to confinement or criminal sanction or in any proceeding preliminary thereto, including a coroner's inquest, grand jury proceedings, and proceedings relating to mental health commitments, the presiding judicial officer shall appoint a qualified interpreter to assist the deaf person throughout the proceedings.

(b) Upon arresting a deaf person for an alleged violation of a criminal law and prior to interrogating or taking a statement of the deaf person, the arresting law enforcement official shall make available to the person, at the earliest possible time, a qualified interpreter to assist the person throughout such interrogation or taking of a statement.

(c) No statement, written or oral, made by a person who is deaf in reply to a question of a law enforcement officer or any other person having a prosecutorial function in any criminal or quasi-criminal proceeding may be used against that deaf person unless either the statement was made or elicited through a qualified interpreter and was made knowingly, voluntarily, and intelligently or, in the case of waiver, the court makes a special finding that any statement made by the deaf person was made knowingly, voluntarily, and intelligently.

(d) This subsection (3) does not apply to apprehensions, arrests, or statements involving a violation of the traffic laws of Montana.

History: En. Sec. 3, Ch. 245, L. 1979.

49-4-504. Preliminary determination. The appointing authority may not appoint a qualified interpreter in any case until he makes a preliminary determination that the qualified interpreter is able to accurately communicate with and translate information to and from the deaf person in the case.

History: En. Sec. 4, Ch. 245, L. 1979.

49-4-505. Intermediary interpreter to be used. If a qualified interpreter states that he is unable to render a satisfactory interpretation and that an intermediary interpreter will improve the quality of interpretation, the appointing authority shall appoint an intermediary interpreter to assist the qualified interpreter subject to the same provisions that govern a qualified interpreter under this part.

History: En. Sec. 5, Ch. 245, L. 1979.

49-4-506. Interpreter in full view. In any action or proceeding in which an interpreter is required to be appointed, the court or administrative authority may not commence proceedings until the appointed interpreter is in full view of and spatially situated to assure proper communication with the deaf person or persons involved as participants.

History: En. Sec. 6, Ch. 245, L. 1979.

49-4-507. Coordination of interpreter requests. (1) Whenever an appointing authority is required to appoint an interpreter, the authority shall request the department of public health and human services to furnish the authority with a list of qualified interpreters. If the choice of qualified interpreters does not meet the needs or wishes of the deaf person, the appointing authority shall appoint another qualified interpreter.

(2) The Montana association of the deaf and the Montana registry of interpreters for the deaf shall provide the department of public health and human services with a list of qualified and available interpreters.

(3) The only function of the department of public health and human services is to maintain the list referred to in subsection (2).

History: En. Sec. 7, Ch. 245, L. 1979; amd. Sec. 237, Ch. 546, L. 1995.

49-4-508. Oath of interpreter. Every interpreter appointed to interpret for a deaf person, before entering upon his duties, shall take an oath that he will make a true interpretation in an understandable manner to the person for whom he is appointed and that he will repeat the statements of such person in the English language to the best of his skill and judgment.

History: En. Sec. 8, Ch. 245, L. 1979.

49-4-509. Compensation. An interpreter appointed to interpret for the deaf is entitled to receive a reasonable fee for his services, together with his actual expenses for travel and

transportation. The appointing authority shall set the fee. When the interpreter is appointed in a criminal proceeding, the fee shall be paid out of the county general fund; and when the interpreter is otherwise appointed, the fees shall be paid out of funds available to the appointing authority.

History: En. Sec. 9, Ch. 245, L. 1979.

49-4-510. Waiver. The right of a deaf person to an interpreter may not be waived except by a deaf person who requests a waiver in writing. Such waiver is subject to the approval of counsel to the deaf person, if existent, and is subject to the approval of the appointing authority.

History: En. Sec. 10, Ch. 245, L. 1979.

49-4-511. Privileged communications. Any information that the interpreter gathers from the deaf person pertaining to any proceeding then pending shall at all times remain confidential and privileged, on an equal basis with the attorney-client privilege, unless such deaf person desires that such information be communicated to other persons.

History: En. Sec. 11, Ch. 245, L. 1979.

TITLE 50

HEALTH AND SAFETY

CHAPTER 1

ADMINISTRATION OF PUBLIC HEALTH LAWS

Part 2

Department

50-1-201. Repealed. Sec. 20, Ch. 378, L. 1995.

History: En. 69-4110.1 by Sec. 1, Ch. 184, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; R.C.M. 1947, 69-4110.1; amd. Sec. 21, Ch. 606, L. 1993.

50-1-202. General powers and duties. (1) In order to carry out the purposes of the public health system to protect and promote the public health, the department, in collaboration with federal, state, and local partners, shall:

- (a) make inspections for conditions of public health importance and issue written orders for correction, destruction, or removal of the condition;
- (b) disseminate information and make recommendations for control of diseases and other conditions of public health importance;
- (c) at the request of the governor, accept funds for and administer any federal health program for which responsibilities are delegated to states;
- (d) identify, assess, prevent, and mitigate conditions of public health importance through:
 - (i) epidemiological tracking and investigation;
 - (ii) screening and testing programs;
 - (iii) isolation and quarantine measures;
 - (iv) treatment;
 - (v) abatement of public health nuisances;
 - (vi) inspections;
 - (vii) collecting and maintaining health information; or
 - (viii) other public health measures as allowed by law;
- (e) promote efforts among public and private sector entities to develop and fund programs or initiatives that identify and ameliorate health problems;
- (f) develop and promote training for members of the public health workforce;
- (g) bring and pursue actions necessary to abate, restrain, or prosecute the violation of public health laws and rules;
- (h) advise state agencies on the following as they relate to public buildings and facilities:

(i) location, drainage, water supply, water quality, heating, plumbing, sewer systems, and ventilation; and

(ii) the disposal of infectious or hazardous wastes;

(i) develop, administer, and promote activities for the protection and improvement of oral health;

(j) develop, adopt, and administer rules setting standards for the operation of programs to protect the health of mothers and children, including programs for nutrition, family planning services, improved pregnancy outcome, and programs authorized by Title X of the federal Public Health Service Act, 42 U.S.C. 300a, et seq., and Title V of the federal Social Security Act, 42 U.S.C. 501 through 510;

(k) conduct health education programs;

(l) provide consultation to school and local public health personnel and consult with the superintendent of public instruction on conditions of public health importance for schools;

(m) develop, adopt, and administer rules setting standards for a program to provide services to children with special health care needs, including standards for:

(i) diagnosis;

(ii) medical, surgical, and corrective treatment;

(iii) aftercare and related services; and

(iv) eligibility;

(n) provide consultation to local boards of health;

(o) promote cooperation and formal collaborative agreements between the state and tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting, information and data sharing, reporting, resource allocation, funding, service delivery, jurisdiction, and other public health matters addressed in this title;

(p) adopt and enforce rules regarding:

(i) the reporting and control of communicable diseases and other conditions of public health importance;

(ii) the imposition of fees for testing, screening, and other services performed by the state laboratory;

(iii) the transportation of dead human bodies;

(iv) the issuance of licenses to laboratories that conduct analysis of public water supply systems; and

(v) public health requirements for school sites, including water supply and quality, sewage and waste disposal, and any other matters pertinent to the health and physical well-being of pupils, teachers, and others; and

(q) take measures to prevent and alleviate threats to the public health from the release of biological, chemical, or radiological agents capable of causing imminent infection, disability, or death.

(2) The department:

(a) has the power to use personnel of local public health agencies to assist in the administration of laws relating to public health services and functions; and

(b) may provide, implement, facilitate, or encourage other public health services and functions as considered reasonable and necessary.

History: En. Sec. 10, Ch. 197, L. 1967; amd. Sec. 31, Ch. 349, L. 1974; amd. Sec. 1, Ch. 288, L. 1977; R.C.M. 1947, 69-4110; amd. Sec. 7, Ch. 200, L. 1979; amd. Sec. 1, Ch. 219, L. 1979; amd. Sec. 1, Ch. 230, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 1, Ch. 660, L. 1983; amd. Sec. 1, Ch. 197, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 324, L. 1995; amd. Secs. 242, 568, Ch. 546, L. 1995; amd. Sec. 5, Ch. 73, L. 1997; amd. Sec. 46, Ch. 472, L. 1997; amd. Sec. 4, Ch. 391, L. 2003; amd. Sec. 17, Ch. 386, L. 2005; amd. Sec. 4, Ch. 150, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 150 inserted (1) concerning collaboration; inserted (1)(a) concerning inspections and written orders; deleted former (1) that read: "(1) shall study conditions affecting the citizens of the state by making use of birth, death, and sickness records"; in (1)(b) at beginning deleted "shall make investigations", near middle substituted "other conditions" for "improvement", and at end substituted "importance" for "to persons, groups, or the public"; in (1)(c) substituted "accept funds for and" for "shall"; inserted (1)(d) through (1)(o) concerning conditions of public health importance, efforts to develop and fund programs or initiatives that identify and ameliorate health problems, training for members of the public health workforce, actions necessary to abate, restrain, or prosecute the violation of public health laws and rules, advising state agencies on matters relating to public buildings and facilities, activities for the protection and improvement of oral health, rules setting standards for the operation of programs to

protect the health of mothers and children, health education programs, consultation to school and local public health personnel, rules setting standards for a program to provide services to children with special health care needs, consultation to local boards of health, and agreements with tribal entities; deleted former (4) through (17) that read: “(4) shall inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;

(5) after each inspection made under subsection (4), shall submit a written report on sanitary conditions to the governor and to the director of the department of corrections or the commissioner of higher education and include recommendations for improvement in conditions if necessary;

(6) shall advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(7) shall develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(8) shall develop, adopt, and administer rules setting standards for participation in and operation of programs to protect the health of mothers and children, which rules may include programs for nutrition, family planning services, improved pregnancy outcome, and those authorized by Title X of the federal Public Health Service Act and Title V of the federal Social Security Act;

(9) shall conduct health education programs;

(10) shall provide consultation to school and local community health nurses in the performance of their duties;

(11) shall consult with the superintendent of public instruction on health measures for schools;

(12) shall develop, adopt, and administer rules setting standards for a program to provide services to children with disabilities, including standards for:

(a) diagnosis;

(b) medical, surgical, and corrective treatment;

(c) aftercare and related services; and

(d) eligibility;

(13) shall provide consultation to local boards of health;

(14) shall bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;

(15) shall accept and expend federal funds available for public health services;

(16) must have the power to use personnel of local departments of health to assist in the administration of laws relating to public health;

(17) shall adopt rules imposing fees for the tests and services performed by the department’s laboratory. Fees should reflect the actual costs of the tests or services provided. The department may not establish fees exceeding the costs incurred in performing tests and services. All fees must be deposited in the state special revenue fund for the use of the department in performing tests and services”; in (1)(p) at beginning deleted “shall”; in (1)(p)(i) at end inserted “and other conditions of public health importance”; inserted (1)(p)(ii) concerning fees; inserted (1)(p)(v) concerning public health requirements for school sites; in (1)(q) at beginning deleted “shall enact or” and near middle after “alleviate” substituted “threats to the public health” for “injury”; inserted (2) concerning use of local personnel and other public health services and functions; and made minor changes in style. Amendment effective October 1, 2007.

50-1-203. Public health inspections. (1) The department may make public health inspections of schoolhouses, churches, theaters, jails, and other buildings or facilities where persons assemble. If public health deficiencies are found in the facility, the department may direct that conditions be corrected within a reasonable time.

(2) Either the department or a local board of health may bring an action, including an action for injunctive relief, to correct the public health deficiencies.

History: En. Sec. 18, Ch. 197, L. 1967; amd. Sec. 1, Ch. 336, L. 1971; amd. Sec. 108, Ch. 349, L. 1974; R.C.M. 1947, 69-4118; amd. Sec. 1, Ch. 383, L. 1995.

50-1-204. Quarantine and isolation measures. The department may adopt and enforce quarantine or isolation measures to prevent the spread of communicable disease. A person who does not comply with quarantine measures shall, on conviction, be fined not less than \$10 or more than \$100. Receipts from fines, except justice’s court fines, must be deposited in the state general fund.

History: En. Sec. 12, Ch. 197, L. 1967; amd. Sec. 33, Ch. 349, L. 1974; R.C.M. 1947, 69-4112; amd. Sec. 33, Ch. 557, L. 1987; amd. Sec. 5, Ch. 391, L. 2003.

50-1-205. Repealed. Sec. 2, Ch. 219, L. 1979.

History: En. Sec. 92, Ch. 197, L. 1967; R.C.M. 1947, 69-4515.

50-1-206. Regulation of schools in matters of health. (1) The department shall adopt regulations prescribing the requirements for school sites, water supply, sewage and waste disposal, and any other matters pertinent to the health and physical well-being of the pupils, teachers, and others who frequent schools.

(2) The department shall furnish to the districts copies of such regulations.

History: En. 75-8207 by Sec. 479, Ch. 5, L. 1971; amd. Sec. 12, Ch. 504, L. 1977; R.C.M. 1947, 75-8207.

50-1-207 through 50-1-209 reserved.

50-1-210. Licensing of laboratories. (1) To authorize a laboratory to submit analyses and reports to the department of environmental quality under Title 75, chapter 6, part 1, the department shall issue a license to any laboratory that intends to conduct analysis of public water supply systems and that files a license application, on a form furnished by the department, demonstrating that it meets the criteria for licensing established by department rules.

(2) A person aggrieved by a decision of the department to grant, deny, or revoke a license may appeal the decision under the contested case provisions of the Montana Administrative Procedure Act.

History: En. Sec. 12, Ch. 73, L. 1997.

50-1-211. (Temporary) Task force on cervical cancer. (1) There is a task force on cervical cancer established in the department of public health and human services.

(2) The task force must be composed of at least 7 and no more than 10 members and must include:

- (a) an obstetrician-gynecologist;
- (b) a registered nurse;
- (c) a physician in family practice;
- (d) a member from the cancer research community;
- (e) a state epidemiologist;
- (f) a cervical cancer survivor; and
- (g) a pediatrician.

(3) The task force members must be appointed by the director to 2-year terms. The task force shall meet quarterly as needed. The task force members may be reimbursed for expenses as provided in 2-18-501 through 2-18-503. Additional members may be added to the task force upon a majority vote of the members.

(4) The task force shall:

(a) review statistical and qualitative data on the use and effectiveness of the human papillomavirus vaccine;

(b) identify strategies for educating the public regarding the availability and efficacy of human papillomavirus vaccine, including appropriate methods for informing and educating parents and adolescents about the risks of human papillomavirus disease, modes of transmission, and availability of a vaccine;

(c) identify and examine the limitations of existing laws, regulations, programs, and services with regard to immunizations;

(d) consider the medical, social, financial, and ethical implications of requiring human papillomavirus vaccination of adolescents for continued enrollment in school;

(e) facilitate coordination of and communication between state and local agencies and organizations;

(f) receive and consider reports and testimony from individuals, including cervical cancer survivors, from leaders on the issue of cervical cancer, and from local health departments, community-based organizations, and voluntary health organizations.

(5) The task force shall issue a report to the children, families, health, and human services interim committee by August 1, 2008:

(a) detailing its findings regarding the use and efficacy of the human papillomavirus vaccine in adolescents;

(b) recommending strategies or actions regarding vaccination of adolescents; and

(c) recommending strategies or actions for the education of the public regarding human papillomavirus disease, modes of transmission, and availability of a vaccine. (*Terminates June 30, 2009—sec. 2, Ch. 473, L. 2007.*)

History: En. Sec. 1, Ch. 404, L. 2005; amd. Sec. 1, Ch. 473, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 473 in (2) near beginning after “at least” increased “6” to “7”; inserted (2)(g) to include a pediatrician on task force; in (3) in third sentence after “members” substituted “may” for “must”; in (4)(a) at end after “on the” substituted “use and effectiveness of the human papillomavirus vaccine” for “prevalence and burden of cervical cancer in Montana”; deleted former (4)(b) that read: “(b) raise public awareness on the causes and nature of cervical cancer”; in (4)(b) near beginning after “strategies” deleted “and new technologies that are effective in preventing and controlling the risk of cervical cancer” and inserted language pertaining to public education on availability and efficacy of papillomavirus vaccine; in (4)(c) at end after “regard to” substituted “immunizations” for

“coverage and awareness issues for cervical cancer”; inserted (4)(d) pertaining to consideration of vaccination of adolescents for continued school enrollment; deleted former (4)(e) that read: “(e) include information and strategies relating to cervical cancer in a state comprehensive cancer control program”; in (4)(f) at end after “organization” deleted “and from other public and private organizations statewide to learn more about contributions to prognosis, prevention, treatment, and improvement of cervical cancer prevention, diagnosis, and treatment in Montana”; in (5) at end of introductory clause after “August 1” substituted “2008” for “2006”; deleted former (5)(a) through (5)(c) that read: “(a) identifying the full impact of cervical cancer in Montana;

(b) recommending strategies or actions to the department to reduce the occurrence of and burden and costs caused by cervical cancer; and

(c) identifying how to increase public awareness of cervical cancer and the options for prevention”; inserted (5)(a) through (5)(c) requiring the task force to issue a report detailing its findings on vaccination of adolescents and containing recommended strategies for vaccination of adolescents and education of the public; and made minor changes in style. Amendment effective May 8, 2007.

Extension of Termination Date: Section 2, Ch. 473, L. 2007, amended sec. 4, Ch. 404, L. 2005, by extending the termination date imposed by Ch. 404 to June 30, 2009. Effective May 8, 2007.

CHAPTER 3 STATE FIRE PREVENTION AND INVESTIGATION PROGRAM

Part 1 General Provisions

50-3-102. Powers and duties of department regarding state fire prevention and investigation — rules. (1) For the purpose of reducing the state’s fire loss, the department shall:

(a) inspect each unit of the Montana university system and other state buildings, including state institutions, as often as duties allow, but no more frequently than once each year unless requested by the commissioner of higher education for buildings in the university system, by the department of corrections or the department of public health and human services for state institutions, or by the department of administration for all other state buildings. A copy of the inspection report for units of the university system must be given to the commissioner of higher education, a copy of the inspection report for state institutions must be given to the department of corrections and the department of public health and human services, and a copy of the inspection report for all other state buildings must be given to the department of administration. The department of justice shall advise the commissioner of higher education and the directors of the departments of corrections, public health and human services, and administration concerning fire prevention, fire protection, and public safety when it distributes the reports.

(b) inspect public, business, or industrial buildings, as provided in chapter 61, and require conformance to law and rules promulgated under the provisions of this chapter;

(c) assist local governmental fire agencies organized under Title 7, chapter 33, in fire investigations and may initiate or supervise these investigations when, in its judgment, the initiation or supervision is necessary;

(d) provide fire prevention and fire protection information to public officials and the general public;

(e) serve as the state entity primarily responsible for promoting fire safety at the state level;

(f) encourage coordination of all services and agencies in fire prevention matters to reduce duplication and fill voids in services; and

(g) establish rules concerning responsibilities and procedures to be followed when there is a threat of explosive material in a building housing state offices.

(2) The department may adopt rules necessary for safeguarding life and property from the hazards of fire and carrying into effect the fire prevention laws of this state if the rules do not conflict with building regulations adopted by the department of labor and industry.

(3) The department shall adopt rules based on nationally recognized standards necessary for safeguarding life and property from the hazards associated with the manufacture, transportation, storage, sale, and use of explosive materials.

(4) If necessary to safeguard life and property under rules promulgated pursuant to this section, the department may maintain an action to enjoin the use of all or a portion of an existing building or restrain a specific activity until there is compliance with the rules.

(5) Except for statements of witnesses given during an investigation, information that may be held in confidence under 50-63-403, and criminal justice information subject to restrictions on dissemination in accordance with Title 44, chapter 5, all records maintained by the department must be open at all times to public inspection.

History: Ap. p. Sec. 1, Ch. 124, L. 1929; re-en. Sec. 2737.1, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1943; amd. Sec. 1, Ch. 278, L. 1947; amd. Sec. 93, Ch. 199, L. 1965; amd. Sec. 2, Ch. 229, L. 1967; amd. Sec. 24, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 169, L. 1975; amd. Sec. 34, Ch. 187, L. 1977; amd. Sec. 2, Ch. 519, L. 1977; Sec. 82-1202, R.C.M. 1947; (1)(k), (1)(l) En. Secs. 19, 22, Ch. 148, L. 1911; re-en. Secs. 2756, 2759, R.C.M. 1921; re-en. Secs. 2756, 2759, R.C.M. 1935; amd. Secs. 36, 37, Ch. 187, L. 1977; Secs. 82-1226, 82-1229, R.C.M. 1947; R.C.M. 1947, 82-1202(1), (2), 82-1226, 82-1229; amd. Sec. 6, Ch. 145, L. 1979; amd. Sec. 2, Ch. 187, L. 1985; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 6, Ch. 706, L. 1991; amd. Sec. 244, Ch. 546, L. 1995; amd. Sec. 2, Ch. 387, L. 2003; amd. Sec. 13, Ch. 449, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 449 in (1)(c) near beginning after "local" substituted "governmental fire agencies organized under Title 7, chapter 33, in fire" for "fire and law enforcement authorities in arson"; in (2) at end after "state" inserted "if the rules do not conflict with building regulations adopted by the department of labor and industry"; and in (4) near middle after "portion" substituted "an existing" for "a". Amendment effective June 1, 2007.

CHAPTER 40 SMOKING IN PUBLIC PLACES

Part 1 Montana Clean Indoor Air Act

50-40-101. Short title. This part may be cited as the "Montana Clean Indoor Air Act of 1979".

History: En. Sec. 1, Ch. 368, L. 1979.

50-40-102. Intent — purpose. The legislature finds and declares that the purposes of this part are as follows:

- (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment;
- (2) to recognize the right of nonsmokers to breathe smoke-free air; and
- (3) to recognize that the need to breathe smoke-free air has priority over the desire to smoke.

History: En. Sec. 2, Ch. 368, L. 1979; amd. Sec. 4, Ch. 361, L. 2003; amd. Sec. 2, Ch. 268, L. 2005.

50-40-103. Definitions. As used in this part, the following definitions apply:

(1) "Bar" means an establishment with a license issued pursuant to Title 16, chapter 4, that is devoted to serving alcoholic beverages for consumption by guests or patrons on the premises and in which the serving of food is only incidental to the service of alcoholic beverages or gambling operations, including but not limited to taverns, night clubs, cocktail lounges, and casinos.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Enclosed public place" means an indoor area, room, or vehicle that the general public is allowed to enter or that serves as a place of work, including but not limited to the following:

- (a) restaurants;
- (b) stores;
- (c) public and private office buildings and offices, including all office buildings and offices of political subdivisions, as provided for in 50-40-201, and state government;
- (d) trains, buses, and other forms of public transportation;
- (e) health care facilities;
- (f) auditoriums, arenas, and assembly facilities;
- (g) meeting rooms open to the public;
- (h) bars;

- (i) community college facilities;
- (j) facilities of the Montana university system; and
- (k) public schools, as provided for in 20-1-220 and 50-40-104.
- (4) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.
- (5) "Incidental to the service of alcoholic beverages or gambling operations" means that at least 60% of the business's annual gross income comes from the sale of alcoholic beverages or gambling receipts, or both.
- (6) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.
- (7) "Place of work" means an enclosed room where one or more individuals work.
- (8) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product.

History: En. Sec. 3, Ch. 368, L. 1979; amd. Sec. 1, Ch. 460, L. 1981; amd. Sec. 133, Ch. 418, L. 1995; amd. Sec. 312, Ch. 546, L. 1995; amd. Sec. 3, Ch. 268, L. 2005.

50-40-104. Smoking in enclosed public places prohibited — notice to public — places where prohibition inapplicable. (1) Except as otherwise provided in this section, smoking in an enclosed public place is prohibited.

(2) The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read and understood, that smoking in the enclosed public place is prohibited.

(3) The proprietor or manager of an intrastate bus that is not chartered shall prohibit smoking in all parts of the bus.

(4) The proprietor or manager of a business licensed under 23-5-611(1)(a) or (1)(c) may not allow any member of the public who is under 18 years of age to be present in any area of the establishment in which smoking is permitted.

(5) The prohibition in subsection (1) does not apply to the following places, whether or not the public is allowed access to those places:

(a) until September 30, 2009, bars, provided that smoke from the bar does not infiltrate into areas where smoking is prohibited under this section;

(b) a private residence, unless it is used for any of the following purposes, in which case the prohibition in subsection (1) applies:

(i) a family day-care home or group day-care home, as defined in 52-2-703 and licensed pursuant to Title 52, chapter 2, part 7;

(ii) an adult foster care home, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5; or

(iii) a health care facility, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5;

(c) a private motor vehicle;

(d) school property in which smoking is allowed pursuant to the exception in 20-1-220;

(e) a hotel or motel room designated as a smoking room and rented to a guest; however, not more than 35% of the rooms available to rent to guests may be designated as smoking rooms; and

(f) a site that is being used in connection with the practice of cultural activities by American Indians that is in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a.

History: En. Sec. 4, Ch. 368, L. 1979; amd. Sec. 2, Ch. 460, L. 1981; amd. Sec. 2, Ch. 505, L. 1985; amd. Sec. 1, Ch. 458, L. 1989; (4) En. Sec. 2, Ch. 281, L. 1991; amd. Sec. 4, Ch. 268, L. 2005.

50-40-108. Enforcement. The provisions of this part must be supervised and enforced by the department and the department's designees, local boards of health, and the boards' designees under the direction of the department.

History: En. Sec. 8, Ch. 368, L. 1979; amd. Sec. 5, Ch. 268, L. 2005.

50-40-110. Rulemaking required. The department shall adopt rules to implement this part.

History: En. Sec. 9, Ch. 268, L. 2005.

50-40-115. Penalties. (1) It is unlawful for a person to smoke in any area where smoking is prohibited under 20-1-220 or 50-40-104. A person who violates 20-1-220 or 50-40-104 is guilty of a misdemeanor and shall be subject to a fine of not less than \$25 or more than \$100.

(2) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of Title 50, chapter 40, is guilty of a misdemeanor after a third violation within a 3-year period and shall be warned, reprimanded, or punished as follows:

- (a) a warning for the first violation;
- (b) a written reprimand for a second violation; and
- (c) within any 3-year period, a fine of:
 - (i) \$100 for a third violation;
 - (ii) \$200 for a fourth violation; and
 - (iii) \$500 for a fifth or subsequent violation.

(3) Penalties imposed under this section may not be considered by the department of revenue for the purposes of 16-4-401 or by the department of justice for the purposes of 23-5-119, 23-5-177, or 23-5-611(1)(a) or (1)(c).

History: En. Sec. 8, Ch. 268, L. 2005.

50-40-120. (Temporary) Part preemptive of stricter ordinance. The provisions of this part preempt adoption of an ordinance or regulation by a political subdivision that is stricter than the provisions of this part as to a place in which the ordinance or regulation applies or as to the penalty or remedy imposed for violation of the ordinance or regulation. (*Terminates September 30, 2009—sec. 14, Ch. 268, L. 2005.*)

History: En. Sec. 7, Ch. 268, L. 2005.

Part 2 Government Offices and Work Areas

50-40-201. Local government buildings — smoking prohibited. (1) In all parts of buildings maintained by a political subdivision, smoking is prohibited as provided in this section.

(2) Buildings owned and occupied by a political subdivision only must be smoke-free on January 1, 2006. Buildings leased and occupied by a political subdivision only must be smoke-free as soon as practicable on or after January 1, 2006, but no later than July 1, 2006. In a building leased and occupied by a political subdivision and another entity, the on-the-scene manager of the political subdivision activity located in the building shall make the portions of the building occupied by the political subdivision activity smoke-free as soon as practicable after January 1, 2006, but no later than July 1, 2006, and is encouraged to work with the building owner or other tenants to make the building smoke-free.

(3) Restrictions contained in this section and imposed by the governing body apply uniformly to the employees of the political subdivision and the public.

History: En. Sec. 1, Ch. 505, L. 1985; amd. Sec. 1, Ch. 466, L. 1989; amd. Sec. 6, Ch. 539, L. 1991; amd. Sec. 1, Ch. 274, L. 1999; amd. Sec. 6, Ch. 268, L. 2005.

CHAPTER 61 FIRE SAFETY IN PUBLIC BUILDINGS

Part 1 General Provisions

50-61-101. Purpose of chapter. The purpose and intent of this chapter are to provide for the public safety in case of fire in those occupancies specified in 50-61-103 and to allow for inspection of the buildings and premises by specified officers.

History: En. Sec. 1, Ch. 279, L. 1947; amd. Sec. 9, Ch. 229, L. 1967; R.C.M. 1947, 69-1801; amd. Sec. 14, Ch. 706, L. 1991; amd. Sec. 5, Ch. 387, L. 2003.

50-61-102. Department of justice to administer chapter. (1) The department of justice has general charge and supervision of the enforcement of this chapter, and the officers

enumerated in 50-61-114 shall act under its general charge and supervision, shall assist the department in giving effect to this chapter, and are subject to its direction and the rules adopted under 50-3-102 and 50-3-103 for the enforcement of 50-61-120, 50-61-121, and this chapter.

(2) Upon its approval of a fire code and a plan for enforcement of the code filed by a municipality or other governmental fire agency organized under Title 7, chapter 33, the department may approve a municipal or governmental fire agency fire inspection program for local enforcement.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(6); amd. Sec. 5, Ch. 506, L. 1989; amd. Sec. 15, Ch. 706, L. 1991; amd. Sec. 2, Ch. 212, L. 1995; amd. Sec. 21, Ch. 449, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 449 in (2) near middle after "municipality" substituted "or other governmental fire agency organized under Title 7, chapter 33" for "district, or fire service area", after "may" substituted "approve" for "certify", and after "municipal" substituted "or governmental fire agency" for "district, or fire service area"; and made minor changes in style. Amendment effective June 1, 2007.

50-61-103. Application of chapter — definitions. This chapter applies to the occupancies defined below:

(1) "Assembly occupancy" means the occupancy or use of a building or a structure or any portion of a building or a structure by a gathering of 50 or more persons for purposes such as civic, political, religious, or social functions, recreation, education, instruction, food or drink consumption, or awaiting transportation.

(2) "Business occupancy" means the occupancy or use of a building or a structure or any portion of a building or a structure for office, professional, or service transactions. A business occupancy includes the use of a structure for the storage of records and accounts or for an eating or drinking business establishment with an occupant load of less than 50 persons.

(3) "Educational occupancy" means the occupancy or use of a building or a structure or any portion of a building or a structure by persons assembled for the purpose of learning or receiving educational instruction. An educational occupancy includes but is not limited to any building used for:

(a) educational purposes through the 12th grade for more than 12 hours a week or 4 hours in any 1 day; or

(b) day-care purposes for more than 12 persons.

(4) "Industrial occupancy" means the occupancy or use of a building or a structure or any portion of a building or a structure for assembling, disassembling, fabricating, finishing, manufacturing, packaging, repairing, or processing operations.

(5) "Institutional occupancy" means the occupancy or use of a building or a structure or any portion of a building or a structure by more than five persons harbored or detained to receive medical, charitable, or other care or treatment or by persons involuntarily detained. An institutional occupancy includes but is not limited to:

(a) nurseries for the full-time care of children under the age of 6;

(b) hospitals, sanitariums, or nursing homes; and

(c) mental hospitals, mental sanitariums, jails, prisons, reformatories, or buildings where personal liberties of those harbored or detained are similarly restrained.

(6) "Residential occupancy" means the occupancy or use of a building or a structure or any portion of a building or a structure by persons for whom sleeping accommodations are provided and who are not harbored or detained to receive medical, charitable, or other care or treatment and who are not involuntarily detained. A residential occupancy includes but is not limited to hotels, motels, apartment houses, dwellings, and lodging houses. A residential occupancy does not include a building used only for private residential purposes for a family.

History: En. Sec. 2, Ch. 279, L. 1947; amd. Sec. 10, Ch. 229, L. 1967; amd. Sec. 12, Ch. 187, L. 1977; R.C.M. 1947, 69-1802; amd. Sec. 6, Ch. 387, L. 2003.

50-61-106. Unlawful to obstruct fire exit. It is unlawful to obstruct in any manner any fire exit, or any hallway, corridor, or entranceway leading to a fire exit, required by rules adopted by the department of justice.

History: En. Sec. 5, Ch. 279, L. 1947; R.C.M. 1947, 69-1805(part); amd. Sec. 16, Ch. 706, L. 1991.

50-61-114. Fire chief and fire inspector to make inspections. For the purpose of examining the premises for violations of this chapter and rules adopted under 50-3-103 for the enforcement of this chapter, the chief or fire inspector of the governmental fire agency organized under Title 7, chapter 33, when a fire inspection program is established, or a fire inspector of the department of justice, when a fire inspection program does not exist:

- (1) shall enter into school buildings at least once each 18 months; and
- (2) may enter into all other buildings and upon all other premises within the jurisdiction, according to priority schedules established by the department for conducting inspections of buildings and premises.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(4); amd. Sec. 1, Ch. 323, L. 1985; amd. Sec. 17, Ch. 706, L. 1991; amd. Sec. 3, Ch. 212, L. 1995; amd. Sec. 7, Ch. 387, L. 2003; amd. Sec. 22, Ch. 449, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 449 near middle of introductory clause after "chief" substituted "or fire inspector of the governmental fire agency organized under Title 7, chapter 33" for "of the fire department of each municipality, district, or fire service area". Amendment effective June 1, 2007.

50-61-115. Notice of violations. (1) When a building is found that is not in compliance with fire safety rules promulgated by the department of justice, the person making the inspection or the department shall serve a written notice upon the party whose duty it is to maintain the safety of the building.

(2) The notice must specify the time within which the defective conditions must be remedied.

(3) The notice is served if delivered to the person to be notified, if left with any adult person at the usual residence or place of business of the person to be notified, or if deposited in the post office directed to the last-known address of the person to be notified. Whenever buildings are managed and controlled by a board of trustees, board of commissioners, or other governing body, the notice is served if delivered to the president, secretary, or treasurer of the board of trustees, board of commissioners, or other governing body.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(part); amd. Sec. 18, Ch. 706, L. 1991; amd. Sec. 23, Ch. 449, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 449 in (2) at end after "remedied" deleted "which may not be more than 90 days"; and made minor changes in style. Amendment effective June 1, 2007.

50-61-116. Lessee who corrects violations entitled to reimbursement. The occupant or lessee of any building who is required to erect fire escapes under the provisions of this chapter is entitled to reimburse himself for the cost and expense of erecting the fire escapes out of the rent or lease money of the premises, and the reimbursement is not a breach of any existing lease, contract, or covenant thereof or grounds for any action or damage ouster.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(part).

50-61-117. Prosecution of violations. It is the duty of the department of justice or other authorized officer to furnish the county attorney with all evidence of violations of rules adopted by the department within the county where said violations occur, and, if the evidence discloses the fact that a violation has occurred, it is the duty of the county attorney of the county to prosecute the person committing the violation in the same manner as in other cases.

History: En. Sec. 10, Ch. 279, L. 1947; R.C.M. 1947, 69-1809(part); amd. Sec. 19, Ch. 706, L. 1991.

50-61-118. Injunction authorized. In addition to the other remedies and penalties provided in this chapter, upon the failure of any of the parties charged with the duty to maintain the safety of the building premises in accordance with rules adopted by the department of justice, the attorney general of the state or the county attorney of the county where the building is located shall bring an action against the owner, lessee, and occupants of the building for an injunction enjoining the further occupancy of it until it is in compliance with this chapter. The action may be brought in the county where the building is located.

History: En. Sec. 11, Ch. 279, L. 1947; R.C.M. 1947, 69-1810; amd. Sec. 20, Ch. 37, L. 1979; amd. Sec. 20, Ch. 706, L. 1991.

50-61-119. Violation of chapter a misdemeanor. (1) Any person failing, neglecting, or refusing to comply with any of the provisions of this chapter shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than \$50.

(2) Each day's failure to comply with any of the provisions of this chapter, after the expiration of the time stipulated in the written notice provided for herein, shall constitute a separate offense.

History: En. Sec. 10, Ch. 279, L. 1947; R.C.M. 1947, 69-1809(part).

50-61-120. Exceeding fire code limits for storage of smokeless powder and small arms primers. (1) A retail establishment may exceed the limits prescribed by an adopted fire or safety code or a local government ordinance or resolution for the storage of smokeless powder and small arms primers if the storage conforms to the provisions contained in 50-61-121.

(2) Nothing in this section may be construed to allow repackaging of smokeless powder from larger to smaller containers on the retail premises.

History: En. Sec. 1, Ch. 506, L. 1989.

50-61-121. Restrictions on storage of smokeless powder and small arms primers.

(1) A retail establishment may stock up to 400 pounds of smokeless powder on the premises of a building with a sprinkler system or 200 pounds on the premises of a building without a sprinkler system if storage of this stock conforms to the following conditions:

- (a) no more than 20 pounds are on display in a customer service area;
- (b) the storage area is clearly posted as off limits to customers;
- (c) the storage area is clearly posted prohibiting smoking or any open flame or sparks; and
- (d) the storage area is a room designed and constructed to restrict smoke travel that is separate from the customer service area, that has a self-closing entrance door, and that conforms to one of the following:

(i) It is constructed of material sufficient to achieve a 1-hour fire resistant-rated barrier between the storage area and the customer service area. The smokeless powder must be stored in cabinets made of wood or equivalent material that is at least 1 inch thick, and each cabinet must contain no more than 200 pounds of smokeless powder. Cabinets must be separated by 25 feet.

(ii) It is protected by a fire suppression sprinkler system approved by the state fire prevention and investigation section of the department of justice or a chief of a governmental fire agency organized under Title 7, chapter 33, or the chief's designee, and the storage area has cabinets as provided for in subsection (1)(d)(i).

(iii) Smokeless powder stock is contained in a cabinet with casters and constructed of wood at least 1 inch thick that is covered on all sides with 5/8-inch sheetrock.

(2) A retail establishment may stock up to 250,000 small arms primers if storage of this stock conforms to the following conditions:

- (a) no more than 20,000 primers in a building with a sprinkler system or 10,000 primers in a building without a sprinkler system are on display in a customer service area;
- (b) the storage area must conform to the conditions imposed in subsections (1)(a) through (1)(d), except that no more than 125,000 small arms primers may be stored in one cabinet, and the minimum required separation between cabinets is 15 feet; and
- (c) small arms primers are retained in packaging approved by the U.S. department of transportation.

History: En. Sec. 2, Ch. 506, L. 1989; amd. Sec. 21, Ch. 706, L. 1991; amd. Sec. 24, Ch. 449, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 449 in (1)(d)(ii) after "investigation" substituted "section" for "program" and after "justice or a" substituted "chief of a governmental fire agency organized under Title 7, chapter 33, or the chief's designee" for "fire marshal of the local jurisdiction". Amendment effective June 1, 2007.

CHAPTER 78
EMPLOYEE AND COMMUNITY
HAZARDOUS CHEMICAL INFORMATION ACT

Part 1
General

50-78-101. Short title. This chapter may be known and cited as the “Employee and Community Hazardous Chemical Information Act”.

History: En. Sec. 1, Ch. 641, L. 1985.

50-78-102. Definitions. As used in this chapter, the following definitions apply:

(1) “Chemical manufacturer” means an employer in codes 31 through 33, as defined in the North American Industry Classification System Manual, with a workplace where chemicals are produced for use or distribution.

(2) “Chemical name” means the scientific designation of a chemical in accordance with the nomenclature system developed by the international union of pure and applied chemistry or the chemical abstracts service rules of nomenclature or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation.

(3) “Common name” means any designation or identification, such as code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(4) “Department” means the department of environmental quality provided for in Title 2, chapter 15, part 35.

(5) “Designated representative” means:

(a) the individual or organization to whom an employee gives written authorization to exercise the employee’s rights under this chapter; or

(b) a recognized or certified collective bargaining agent who is automatically a designated representative without regard to written employee authorization.

(6) “Distributor” means a business, other than a chemical manufacturer, that supplies hazardous chemicals to other distributors or to employers.

(7) “Employee” means a person who may be exposed to hazardous chemicals in the workplace under normal operating conditions or possible emergencies.

(8) “Employer” means a person, firm, corporation, partnership, association, governmental agency, or other entity that is engaged in business or providing services and that employs workers.

(9) “Exposure” means ingestion, inhalation, absorption, or other contact in the workplace with a hazardous chemical and includes potential, accidental, or possible exposure.

(10) “Hazardous chemical” means, except as provided in 50-78-103:

(a) any element, chemical compound, or mixture of elements or compounds that is a physical hazard or health hazard, as defined by subsection (c) of the OSHA standard, and that has been identified as such by the federal occupational safety and health administration or the manufacturer and has been filed with the federal occupational safety and health administration;

(b) any hazardous chemical, as defined by subsection (d)(3) of the OSHA standard; or

(c) any emitter of ionizing radiation.

(11) “Label” means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

(12) “Local fire chief” means the chief of a governmental fire agency organized under Title 7, chapter 33, or the chief’s designee.

(13) “Manufacturing employer” means an employer with a workplace classified in codes 31 through 33 of the North American Industry Classification System who manufactures, uses, or stores a hazardous chemical.

(14) “Material safety data sheet” means a document prepared in accordance with the requirements of the OSHA standard and containing chemical hazard and safe handling information.

(15) “Nonmanufacturing employer” means an employer with a workplace classified in a North American Industry Classification System code other than 31 through 33.

(16) “OSHA standard” means the hazard communication standard issued by the federal occupational safety and health administration, codified under 29 CFR 1910.1200.

(17) “Trade secret” means a confidential formula, pattern, process, device, or information, including chemical name or other unique chemical identifier, that is used in an employer’s business and that gives the employer an opportunity to obtain an advantage over competitors.

(18) “Work area” means a room or defined space in a workplace where hazardous chemicals are produced, used, or stored and where employees are present.

(19) “Workplace” means an establishment at one geographical location containing one or more work areas.

(20) “Workplace chemical list” means the list of hazardous chemicals developed under subsection (e)(1)(i) of the OSHA standard or under this chapter.

History: En. Sec. 2, Ch. 641, L. 1985; amd. Sec. 145, Ch. 418, L. 1995; amd. Sec. 332, Ch. 546, L. 1995; amd. Sec. 80, Ch. 51, L. 1999; amd. Sec. 36, Ch. 449, L. 2007.

Compiler’s Comments

2007 Amendment: Chapter 449 in definition of local fire chief after “means” substituted “the chief of a governmental fire agency organized under Title 7, chapter 33, or the chief’s designee” for “(a) the chief of the municipal fire department or the chief’s agent, for any workplace located within a city or town; or

(b) the county rural fire chief or the district rural fire chief or the chief’s agent, for any workplace not located within a city or town”; in definition of OSHA standard at end deleted “as that statute reads on January 1, 1985”; and made minor changes in style. Amendment effective June 1, 2007.

50-78-103. Applicability — exemptions. (1) The provisions of this chapter do not apply to:

- (a) any consumer product intended for personal consumption or use by an employee;
- (b) any retail food sale establishment or other retail trade establishment, exclusive of processing and repair areas;
- (c) a food, drug, or cosmetic as defined in the Montana Food, Drug, and Cosmetic Act, Title 50, chapter 31;
- (d) a source of ionizing radiation that is an exempt or generally licensed material or device, as defined and described in rules adopted under 50-79-202 and implementing 50-79-104 and 50-79-202;
- (e) the radiological properties of any source, byproduct, or special nuclear material as defined in sections 11(z), 11(aa), and 11(e)(1) of the federal Atomic Energy Act of 1954; or
- (f) sealed containers of hazardous chemicals:
 - (i) during transportation or while in storage at transportation terminals, so long as existing labels are not removed or defaced and the employer complies with state and federal regulations relating to the transportation of hazardous chemicals; or
 - (ii) at a facility of a distributor, as long as existing labels are not removed or defaced and the employer distributes material safety data sheets as required under 50-78-203(1).

(2) Employers operating the following workplaces are in compliance with this chapter if they retain and make accessible to employees and, when applicable, to students, all material safety data sheets received or, if no material safety data sheet is received for a hazardous chemical, any other information received on its hazards and safe handling and if the provisions of 50-78-206, 50-78-301(2) through (4), and 50-78-305 are met:

- (a) a teaching, research, or testing laboratory, including any associated storeroom;
- (b) a clinical laboratory or health care facility as defined in 50-5-101;
- (c) a pharmacy as defined in 37-7-101;
- (d) a public health center as defined in 7-34-2102; or
- (e) an office of a physician, dentist, osteopath, podiatrist, optometrist, or veterinarian licensed under Title 37.

(3) The provisions of this chapter do not apply to any hazardous chemical subject to the packaging and labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq., except that a chemical manufacturer producing the hazardous chemicals must comply with all provisions of this chapter.

History: En. Sec. 3, Ch. 641, L. 1985; amd. Sec. 1, Ch. 536, L. 1987; amd. Sec. 16, Ch. 93, L. 1997.

50-78-104. Relationship to OSHA standard. Any employer complying with the provisions of the OSHA standard, whether or not that employer is regulated by the OSHA standard, is exempt from the provisions of this chapter, except for 50-78-204 and 50-78-301.

History: En. Sec. 4, Ch. 641, L. 1985; amd. Sec. 2, Ch. 536, L. 1987.

Part 2

Notice Required

50-78-201. Notice to employees. Employers shall post adequate notice at locations where notices are normally posted informing employees about their rights under this chapter.

History: En. Sec. 5, Ch. 641, L. 1985.

50-78-202. Workplace chemical list. (1) Each employer shall compile and maintain a workplace chemical list. Except as provided in 50-78-205, the workplace chemical list must contain the chemical name of each hazardous chemical in the workplace, cross-referenced to any generally used common name. For chemical mixtures, the chemical name of each hazardous constituent indicated on the material safety data sheet must be provided in parentheses along with the chemical name. The chemical abstracts service registry number, if available from the material safety data sheet, must accompany all chemical names on the workplace chemical list.

(2) The workplace chemical list must indicate the work area in which each hazardous chemical is normally stored or used.

(3) The workplace chemical list may be prepared for the workplace as a whole or for each work area, provided the list is readily available to employees and their designated representatives.

(4) New or newly assigned employees must be made aware of the workplace chemical list before working with or in a work area containing hazardous chemicals.

(5) The workplace chemical list must be updated as necessary but not less than annually.

History: En. Sec. 6, Ch. 641, L. 1985; amd. Sec. 1, Ch. 15, Sp. L. June 1986.

50-78-203. Material safety data sheets. (1) Each chemical manufacturer or distributor shall provide a manufacturing or nonmanufacturing employer with the appropriate material safety data sheet upon delivery of a hazardous chemical.

(2) Each employer shall maintain the most current material safety data sheet for each hazardous chemical in the workplace. If a material safety data sheet has not been provided by the chemical manufacturer or distributor at the time a hazardous chemical is delivered to the employer, the employer shall request one in writing within 5 working days. Each employer shall maintain a copy of any correspondence sent or received by the employer in an effort to obtain a material safety data sheet for a hazardous chemical when none was provided by the chemical manufacturer or distributor.

(3) Material safety data sheets must be provided by the employer to any employee or designated representative upon request for review or copying.

History: En. Sec. 7, Ch. 641, L. 1985.

50-78-204. Employee rights. (1) An employee who may be exposed to hazardous chemicals must be informed of the potential or actual exposure and must be provided access to the workplace chemical list and to the material safety data sheet for each hazardous chemical. An employer who does not provide an employee with information on a hazardous chemical within 5 working days of the request for information, as required by this chapter, may not require the employee to work with the hazardous chemical until the information is made available.

(2) Each employee must receive training from his employer, as provided in 50-78-305 or in the OSHA standard, on the hazards of workplace chemicals and on protective measures for handling those chemicals.

(3) Each employee required to work with a hazardous chemical must be provided with appropriate personal protective equipment.

(4) No employer shall discharge, cause to be discharged, discipline, discriminate against, or initiate any adverse personnel action against any employee who exercises his rights, testifies, or assists others in exercising their rights or duties under this chapter.

(5) A waiver by an employee of the benefits, rights, or requirements of this chapter is against public policy and is void. An employer's request or requirement that an employee waive any rights under this chapter as a condition of employment is a violation of this chapter.

(6) A designated representative may act on behalf of an employee in pursuing any right or enforcement remedy under this chapter.

History: En. Sec. 10, Ch. 641, L. 1985.

50-78-205. Trade secret confidentiality. (1) An employer who believes that the name of a hazardous chemical is a trade secret may withhold the chemical name from the material safety data sheet and workplace chemical list only if:

(a) a material safety data sheet, coded to an identifying notation on each container of the hazardous chemical, is available in the work area where the hazardous chemical is present;

(b) the material safety data sheet discloses the properties and effects of the hazardous chemical;

(c) the specific chemical identity is provided to a treating physician or nurse in the event of a medical emergency, as provided for in subsection (i)(2) of the OSHA standard;

(d) the specific chemical identity is provided in nonemergency situations to a health professional providing medical or other occupational health services to an exposed employee, as provided for in subsections (i)(3) through (5) of the OSHA standard; and

(e) the employer claims that the information is a trade secret and that claim can be supported.

(2) If a person believes that disclosing certain trade information on a material safety data sheet will reveal a trade secret, a trade secret claim may be filed with the department, which shall use this procedure to determine the validity of the trade secret claim:

(a) The department shall give notice by certified mail to the person making the claim to submit trade secret substantiation information within 30 days after receipt of such notice. Failure to supply the substantiation information constitutes a waiver of the trade secret claim.

(b) The department has the responsibility to determine the validity of the trade secret claim and shall consider the trade secret substantiation information as confidential.

(c) If the department determines the trade secret claim is not valid, the department shall so notify by certified mail the person making the claim for trade secret protection, stating the basis for the decision. The person making the claim has 30 days after notification by the department to initiate judicial review in the district court of Lewis and Clark County and obtain a preliminary injunction or other court order to prevent disclosure of the trade secret.

(d) The unauthorized use or disclosure of trade secret information submitted under this section is a misdemeanor.

History: En. Sec. 11, Ch. 641, L. 1985.

50-78-206. Labels. (1) An employer or distributor may not remove or deface any existing label on a container of a hazardous chemical, except that the chemical name may be concealed under trade secret protection as provided in 50-78-205.

(2) Any portable container intended for an immediate transfer of a hazardous chemical is not required to be labeled.

History: En. Sec. 8, Ch. 641, L. 1985.

Part 3 Information and Education

50-78-301. Emergency and community information. (1) An employer shall comply with the provisions of the federal Emergency Planning and Community Right-to-Know Act of 1986 or be subject to the enforcement provisions thereof.

(2) The local fire chief must be permitted onsite inspection of hazardous chemicals in any workplace, including workplaces under the control of a state agency, for the purposes of planning fire department activities in case of an emergency and reviewing compliance with this chapter. For a workplace that employs fire safety personnel, the local fire chief shall consult with the responsible fire safety official to clarify respective roles and response procedures in the event of an emergency.

(3) As a result of an inspection, the local fire chief may note and report for possible action by the county attorney or other appropriate law enforcement official any violation by an employer of a provision of this chapter or any other law pertaining to hazardous chemicals or fire safety.

(4) The local fire chief shall consult at least annually on safety and emergency considerations with each person responsible for the operation of any research, educational, or testing laboratory workplace. The consultation may result in recommendations or, under the provisions of 50-62-102, orders by the fire chief to be implemented by the laboratory operator to enhance public safety, to reduce the likelihood of emergency incidents, or to improve emergency response in the event of an accident. The person responsible for the operation of the laboratory shall contact the local fire chief at any time there is a significant change in the location or nature of the hazardous chemicals in the workplace, initiation of any new and potentially dangerous method of processing or reacting hazardous chemicals, or any other operational change affecting emergency response considerations.

History: En. Sec. 9, Ch. 641, L. 1985; amd. Sec. 2, Ch. 15, Sp. L. June 1986; amd. Sec. 3, Ch. 536, L. 1987; amd. Sec. 36, Ch. 706, L. 1991.

50-78-302 through 50-78-304 reserved.

50-78-305. Employee education program. (1) Each employer shall provide, at least annually, an education and training program for all his employees using or handling hazardous chemicals. Additional instruction must be provided whenever the potential for exposure to hazardous chemicals is altered or whenever new and significant information is received by the employer concerning the hazards of a chemical. New or newly assigned employees must be provided training before working with or in a work area containing a hazardous chemical.

(2) The programs must provide instruction in:

(a) interpreting labels and material safety data sheets and the relationship between these two methods of hazard communication;

(b) the location and acute and chronic effects of hazardous chemicals used by the employees; and

(c) the safe handling, protective equipment, first-aid treatment, and cleanup and disposal procedures for hazardous chemicals.

(3) The employer shall keep a record of the dates of training sessions given to employees and the names of the employees attending.

History: En. Sec. 12, Ch. 641, L. 1985.

50-78-306. Departmental information program. (1) The department may develop and provide to any employer a suitable form of notice to inform employees of their rights under this chapter.

(2) The department may develop an education and training program to assist employers in complying with the provisions of 50-78-204.

(3) The department may develop and distribute a supply of informational leaflets on employer duties, employee rights, the effects of hazardous chemicals, and any other topic related to hazardous chemicals in the workplace.

(4) The department may contract with the Montana university system or any other public or private organization to develop and implement an information program on hazardous chemicals in the workplace.

History: En. Sec. 13, Ch. 641, L. 1985.

Part 4 Enforcement and Penalties

50-78-401. No effect on other duties or liabilities. The provision of information to an employee does not in any way affect the liability of an employer with regard to the health and safety of an employee or other person exposed to hazardous chemicals, nor does it affect the employer's responsibility to take any action to prevent the occurrence of occupational disease or accident as required under any other provision of law. The provision of information to an employee does not affect any other duty of a manufacturer, producer, or formulator to warn ultimate users of a hazardous chemical under any other provision of law.

History: En. Sec. 14, Ch. 641, L. 1985.

50-78-402. Complaints, investigation, and penalties. (1) An employee in a workplace covered by the OSHA standard who believes his employer is not complying with the provisions of

the OSHA standard may report the alleged violation to the federal occupational safety and health administration.

(2) An employee who believes an employer is not complying with the provisions of this chapter may submit a written complaint to the local health officer, as defined and described in Title 50, chapter 2, part 1.

(3) If the local health officer chooses to act on the complaint, he shall:

(a) within 5 working days of receipt of the complaint, investigate the complaint and, in the event of an apparent violation, seek a corrective response from the employer;

(b) within 10 working days of receipt of a complaint, complete a report that details the findings of the investigation and the response of the employer;

(c) upon completion of the report, submit copies to the employee requesting the investigation, the county attorney, and the employer; and

(d) if the evidence suggests that the employer has violated the provisions of this chapter and the health officer does not receive a corrective response within 10 days of notifying the employer of the violation, file a complaint in the appropriate court or request appropriate action by the county attorney to prosecute the alleged violation.

(4) An employee may submit a written complaint to the county attorney.

(5) The county attorney shall investigate any complaint received and, if a violation appears to have occurred and the county attorney does not receive a corrective response within 10 days of notifying the employer of the violation, initiate appropriate court proceedings to prosecute the violation.

(6) A person found to be knowingly in violation of this chapter is guilty of a misdemeanor. Each day of violation is a separate offense.

History: En. Sec. 15, Ch. 641, L. 1985.

TITLE 52

FAMILY SERVICES

CHAPTER 1

ADMINISTRATION

Part 1

General

52-1-101. Purpose. It is the public policy of the legislature to reduce duplication and fragmentation of services to youth, families, and senior citizens by creating a department that shall develop and maintain consolidated programs and services, except youth correctional services, within available resources, and a planned continuum of services to:

(1) provide protective services to ensure the health, welfare, and safety of children and adults who are in danger of abuse, neglect, or exploitation within communities; and

(2) provide supportive services to enable senior citizens to maintain their independence.

History: En. Sec. 3, Ch. 609, L. 1987; amd. Sec. 333, Ch. 546, L. 1995.

52-1-102. Definitions. Unless the context requires otherwise, in this title, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Director" means the director of public health and human services provided for in 2-15-2201.

History: En. Sec. 4, Ch. 609, L. 1987; amd. Sec. 334, Ch. 546, L. 1995.

52-1-103. Powers and duties of department. The department shall:

(1) administer and supervise all forms of child and adult protective services;

(2) act as the lead agency in coordinating and planning services to children with multiagency service needs;

- (3) establish a system of councils at the state and local levels to make recommendations and to advise the department on issues, including children's issues;
- (4) provide the following functions, as necessary, for youth in need of care:
 - (a) intake, investigation, case management, and client supervision;
 - (b) placement in youth care facilities;
 - (c) contracting for necessary services;
 - (d) protective services day care; and
 - (e) adoption;
- (5) register or license youth care facilities, child-placing agencies, day-care facilities, community homes for persons with developmental disabilities, community homes for severely disabled persons, and adult foster care facilities;
- (6) act as lead agency in implementing and coordinating child-care programs and services under the Montana Child Care Act;
- (7) administer the Interstate Compact for the Placement of Children;
- (8) (a) administer child abuse prevention services funded through child abuse grants and the Montana children's trust fund provided for in Title 52, chapter 7, part 1; and
 - (b) administer elder abuse prevention services;
- (9) develop a statewide youth services and resources plan that takes into consideration local needs;
- (10) administer services to the aged;
- (11) provide consultant services to:
 - (a) facilities providing care for adults who are needy, indigent, or dependent or who have disabilities; and
 - (b) youth care facilities;
- (12) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;
- (13) contract, as necessary, for administration of child and adult protection services for each county; and
- (14) adopt rules necessary to carry out the purposes of 52-2-612 and this chapter.

History: En. Sec. 5, Ch. 609, L. 1987; amd. Sec. 61, Ch. 83, L. 1989; amd. Sec. 7, Ch. 692, L. 1989; amd. Sec. 8, Ch. 655, L. 1991; amd. Sec. 1, Ch. 91, L. 1993; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 22, Ch. 458, L. 1995; amd. Sec. 335, Ch. 546, L. 1995; amd. Sec. 11, Ch. 171, L. 1997; amd. Sec. 49, Ch. 472, L. 1997; amd. Sec. 10, Ch. 571, L. 2001; amd. Sec. 102, Ch. 114, L. 2003.

CHAPTER 2 CHILDREN'S SERVICES

Part 1 Child Welfare Services

52-2-101. Definitions. As used in this part, the following definitions apply:

- (1) "Child welfare services" means the establishing, extending, and strengthening of child welfare services, especially in predominantly rural areas, for the protection and care of abused or neglected children.
- (2) "Department" means the department of public health and human services provided for in 2-15-2201.

History: (1), (2) En. Sec. 2, Part 6, Ch. 82, L. 1937; amd. Sec. 25, Ch. 264, L. 1955; amd. Sec. 49, Ch. 121, L. 1974; Sec. 71-706, R.C.M. 1947; (3), (4) En. 71-201.1 by Sec. 19, Ch. 121, L. 1974; Sec. 71-201.1, R.C.M. 1947; R.C.M. 1947, 71-201.1, 71-706; amd. Sec. 2, Ch. 447, L. 1987; amd. Sec. 87, Ch. 609, L. 1987; Sec. 53-4-101, MCA 1989; redes. 52-2-101 by Code Commissioner, 1991; amd. Sec. 9, Ch. 249, L. 1991; amd. Sec. 6, Ch. 356, L. 1993; amd. Sec. 56, Ch. 18, L. 1995; amd. Sec. 23, Ch. 458, L. 1995; amd. Sec. 337, Ch. 546, L. 1995.

Part 2 Multiagency Children's Services

52-2-211. County interdisciplinary child information team. (1) The following persons and agencies operating within a county may by written agreement form a county interdisciplinary child information team:

- (a) the youth court;

- (b) the county attorney;
 - (c) the department of public health and human services;
 - (d) the county superintendent of schools;
 - (e) the sheriff;
 - (f) the chief of any police force;
 - (g) the superintendents of public school districts; and
 - (h) the department of corrections.
- (2) The persons and agencies signing a written agreement under subsection (1) may by majority vote allow the following persons to sign the written agreement and join the team:
- (a) physicians, psychologists, psychiatrists, nurses, and other providers of medical and mental health care;
 - (b) entities operating private elementary and secondary schools;
 - (c) attorneys; and
 - (d) a person or entity that has or may have a legitimate interest in one or more children that the team will serve.
- (3) (a) The members of the team or their designees may form one or more auxiliary teams for the purpose of providing service to a single child, a group of children, or children with a particular type of problem or for any other purpose. Auxiliary teams are subject to the written agreement.
- (b) A member of an auxiliary team must be a person who has personal knowledge of or experience with the child or children in the member's respective field.
- (4) The purpose of the team and written agreement is to facilitate the exchange and sharing of information that one or more team members may be able to use in serving a child in the course of their professions and occupations, including but not limited to abused or neglected children, delinquent youth, and youth in need of intervention. Information regarding a child that a team member supplies to other team members or that is disseminated to a team member under 41-3-205 or 41-5-215(2) and (3) may not be disseminated beyond the team.
- (5) The terms of the written agreement must provide for the rules under which the team will operate, the method by which information will be shared, distributed, and managed, and any other matters necessary to the purpose and functions of the team.
- (6) The terms of the written agreement must state how the team will coordinate its efforts with interdisciplinary child protective teams as provided in 41-3-108 and youth placement committees as provided for in 41-5-121.
- (7) To the extent that the county interdisciplinary child information team is involved in a proceeding that is held prior to adjudication of a youth in youth court, the team satisfies the requirements of 20 U.S.C. 1232g(b)(1)(E)(ii)(I) of the Family Educational Rights and Privacy Act of 1974. Montana school districts may release education records to the team. The terms of the written agreement described in subsection (5) must include a requirement that the officials and authorities to whom the information is disclosed certify in writing to the school district that is releasing the education records that the education records or information from the education records will not be disclosed to any other party without the prior written consent of the parent or guardian of the student.

History: En. Sec. 1, Ch. 510, L. 1991; amd. Sec. 26, Ch. 458, L. 1995; amd. Sec. 7, Ch. 466, L. 1995; amd. Sec. 341, Ch. 546, L. 1995; amd. Sec. 58, Ch. 550, L. 1997; amd. Sec. 2, Ch. 564, L. 1999.

Part 3

Multiagency Service Placement Plan

52-2-301. State policy. The legislature declares that it is the policy of this state:

- (1) to provide for and encourage the development of a stable system of care, including quality education, treatment, and services for the high-risk children of this state with multiagency service needs, to the extent that funds are available;
- (2) to serve high-risk children with multiagency service needs either in their homes or in the least restrictive and most appropriate setting for their needs in order to preserve the unity and welfare of the family, whenever possible, and to provide for their care and protection and mental, social, and physical development;

(3) to serve high-risk children with multiagency service needs within their home, community, region, and state, whenever possible, and to use out-of-state providers as a last resort;

(4) to provide integrated services to high-risk children with multiagency service needs;

(5) to contain costs and reduce the use of high-cost, highly restrictive, out-of-home placements;

(6) to increase the capacity of communities to serve high-risk children with multiagency service needs in the least restrictive and most appropriate setting for their needs by promoting collaboration and cooperation among the agencies that provide services to children;

(7) to prioritize available resources for meeting the essential needs of high-risk children with multiagency service needs; and

(8) to reduce out-of-home and out-of-community placements through a children's system of care account to fund in-state and community-based services that meet the needs of high-risk children with multiagency service needs in the least restrictive and most appropriate setting possible.

History: En. Sec. 2, Ch. 324, L. 1993; amd. Sec. 1, Ch. 118, L. 2003; amd. Sec. 2, Ch. 123, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 123 inserted (8) concerning out-of-home and out-of-community placements; and made minor changes in style. Amendment effective July 1, 2007.

52-2-302. Definitions. The following definitions apply to this part:

(1) (a) "High-risk child with multiagency service needs" means a child under 18 years of age who is seriously emotionally disturbed, who is placed or who imminently may be placed in an out-of-home setting, and who has a need for collaboration from more than one state agency in order to address the child's needs.

(b) The term does not include a child incarcerated in a state youth correctional facility.

(2) "Least restrictive and most appropriate setting" means a setting in which a high-risk child with multiagency service needs is served:

(a) within the child's family or community; or

(b) outside the child's family or community where the needed services are not available within the child's family or community and where the setting is determined to be the most appropriate alternative setting based on:

(i) the safety of the child and others;

(ii) ethnic and cultural norms;

(iii) preservation of the family;

(iv) services needed by the child and the family;

(v) the geographic proximity to the child's family and community if proximity is important to the child's treatment.

(3) "Provider" means an agency of state or local government, a person, or a program authorized to provide treatment or services to a high-risk child with multiagency service needs who is suffering from mental, behavioral, or emotional disorders.

(4) "Services" has the meaning as defined in 52-2-202.

(5) "System of care" means an integrated service support system that:

(a) emphasizes the strengths of the child and the child's family;

(b) is comprehensive and individualized; and

(c) provides for:

(i) culturally competent and developmentally appropriate services in the least restrictive and most appropriate setting;

(ii) full involvement of families and providers as partners;

(iii) interagency collaboration; and

(iv) unified care and treatment planning at the individual child level.

History: En. Sec. 1, Ch. 324, L. 1993; amd. Sec. 2, Ch. 118, L. 2003.

52-2-303. Children's system of care planning committee — membership — administration. (1) There is a children's system of care planning committee.

(2) The committee is composed of the following members:

(a) an appointee of the director of the department of public health and human services representing the mental health program;

(b) an appointee of the director of the department of public health and human services representing child protective services;

(c) an appointee of the director of the department of public health and human services representing the developmental disability program;

(d) an appointee of the director of the department of public health and human services representing the chemical dependency treatment program;

(e) other appointees considered appropriate by the director of the department of public health and human services who may be representatives of families of high-risk children with multiagency service needs, service providers, or other interested persons or governmental agencies;

(f) an appointee of the superintendent of public instruction representing education;

(g) an appointee of the director of the department of corrections;

(h) an appointee of the youth justice council of the board of crime control; and

(i) an appointee of the supreme court representing the youth courts.

(3) The committee is attached to the department of public health and human services for administrative purposes only as provided in 2-15-121.

(4) Except as provided in this section, the committee must be administered in accordance with 2-15-122.

History: En. Sec. 3, Ch. 324, L. 1993; amd. Sec. 148, Ch. 418, L. 1995; amd. Sec. 342, Ch. 546, L. 1995; amd. Sec. 3, Ch. 118, L. 2003.

52-2-304. Committee duties. (1) The committee established in 52-2-303 shall, to the extent possible within existing resources:

(a) develop policies aimed at eliminating or reducing barriers to the implementation of a system of care;

(b) promote the development of an in-state quality array of core services in order to assist in returning high-risk children with multiagency service needs from out-of-state placements, limiting and preventing the placement of high-risk children with multiagency service needs out of state, and maintaining high-risk children with multiagency service needs within the least restrictive and most appropriate setting;

(c) advise local agencies to ensure that the agencies comply with applicable statutes, administrative rules, and department policy in committing funds and resources for the implementation of unified plans of care for high-risk children with multiagency service needs and in making any determination that a high-risk child with multiagency service needs cannot be served by an in-state provider;

(d) encourage the development of local interagency teams with participation from representatives from child serving agencies who are authorized to commit resources and make decisions on behalf of the agency represented;

(e) specify outcome indicators and measures to evaluate the effectiveness of the system of care;

(f) develop mechanisms to elicit meaningful participation from parents, family members, and youth who are currently being served or who have been served in the children's system of care; and

(g) take into consideration the policies, plans, and budget developed by any service area authority provided for in 53-21-1006.

(2) The committee shall coordinate responsibility for the development of a stable system of care for high-risk children with multiagency service needs that may include, as appropriate within existing resources:

(a) pooling funding from federal, state, and local sources to maximize the most cost-effective use of funds to provide services in the least restrictive and most appropriate setting to high-risk children with multiagency service needs;

(b) applying for federal waivers and grants to improve the delivery of integrated services to high-risk children with multiagency service needs;

(c) providing for multiagency data collection and for analysis relevant to the creation of an accurate profile of the state's high-risk children with multiagency service needs in order to

provide for the use of services based on client needs and outcomes and use of the analysis in the decisionmaking process;

- (d) developing mechanisms for the pooling of human and fiscal resources; and
- (e) providing training and technical assistance, as funds permit, at the local level regarding governance, development of a system of care, and delivery of integrated multiagency children's services.

(3) (a) In order to maximize integration and minimize duplication, the local interagency team, provided for in subsection (1)(d), may be facilitated in conjunction with an existing statutory team for providing youth services, including:

- (i) a child protective team as provided for in 41-3-108;
- (ii) a youth placement committee as provided for in 41-5-121 and 41-5-122;
- (iii) a county interdisciplinary child information team or an auxiliary team as provided for in 52-2-211;

- (iv) a foster care review committee as provided for in 41-3-115;

- (v) a local citizen review board as provided for in 41-3-1003; and

- (vi) a local advisory council as provided for in 53-21-702.

(b) If the local interagency team decides to coordinate and consolidate statutory teams, it shall ensure that all state and federal rules, laws, and policies required of the individual statutory teams are fulfilled.

History: En. Sec. 4, Ch. 324, L. 1993; amd. Sec. 4, Ch. 118, L. 2003; amd. Sec. 63, Ch. 130, L. 2005; amd. Sec. 1, Ch. 200, L. 2005.

52-2-305. Repealed. Sec. 6, Ch. 118, L. 2003.

History: En. Sec. 5, Ch. 324, L. 1993.

52-2-306. Repealed. Sec. 6, Ch. 118, L. 2003.

History: En. Sec. 6, Ch. 324, L. 1993.

52-2-307. Repealed. Sec. 6, Ch. 118, L. 2003.

History: En. Sec. 7, Ch. 324, L. 1993.

52-2-308. Rulemaking. The department shall adopt rules necessary to implement 52-2-301 through 52-2-304 and 52-2-309. The rules must be adopted in cooperation with the committee established in 52-2-303.

History: En. Sec. 8, Ch. 324, L. 1993; amd. Sec. 5, Ch. 118, L. 2003; amd. Sec. 3, Ch. 123, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 123 at end of first sentence inserted "and 52-2-309". Amendment effective July 1, 2007.

52-2-309. Children's system of care account. (1) There is a children's system of care account in the state special revenue fund to the credit of the department. The fund must be used for the purpose of administering and delivering services to high-risk children with multiagency service needs and to provide for the children's care, protection, and mental, social, and physical development.

(2) The children's system of care account must consist of funds:

- (a) transferred, to the extent possible within existing resources, by the agencies named in 52-2-303 from their agency appropriation;

- (b) designated by the legislature; or

- (c) received for the account from any other source.

(3) The department shall use funds from the children's system of care account to reimburse in-state or community-based providers of services for services that allow high-risk children with multiagency service needs to be placed or to remain in the least restrictive and most appropriate setting, to the extent that the services are not eligible for reimbursement from another source.

History: En. Sec. 1, Ch. 123, L. 2007.

Compiler's Comments

Effective Date: Section 6, Ch. 123, L. 2007, provided that this section is effective July 1, 2007.

TITLE 53

SOCIAL SERVICES AND INSTITUTIONS

CHAPTER 21

MENTALLY ILL

Part 11

Suicide Prevention Program

Part Compiler's Comments

Effective Date: Section 6, Ch. 471, L. 2007, provided: "[This act] is effective July 1, 2007."

53-21-1101. Suicide prevention officer — duties. (1) The department of public health and human services shall implement a suicide prevention program by January 1, 2008. The program must be administered by a suicide prevention officer attached to the office of the director of the department.

(2) The suicide prevention officer shall:

(a) coordinate all suicide prevention activities being conducted by the department, including activities in the addictive and mental disorders division, the health resources division, and the public health and safety division, and coordinate with any suicide prevention activities that are conducted by other state agencies, including the office of the superintendent of public instruction, the department of corrections, the department of military affairs, and the university system;

(b) develop a biennial suicide reduction plan that addresses reducing suicides by Montanans of all ages;

(c) direct a statewide suicide prevention program with activities that include but are not limited to:

(i) conducting statewide public awareness campaigns utilizing both paid and free media and including input from government agencies, school representatives from elementary schools through higher education, mental health advocacy groups, and other relevant nonprofit organizations;

(ii) initiating, in partnership with Montana's tribes and tribal organizations, a public awareness program that is culturally appropriate and that utilizes the modalities best suited for Indian country;

(iii) seeking opportunities for research that will improve understanding of suicide in Montana and provide increased suicide-related services;

(iv) training for medical professionals, military personnel, school personnel, social service providers, and the general public on recognizing the early warning signs of suicidality, depression, and other mental illnesses; and

(v) providing grants to communities or other government, nonprofit, or tribal entities to start new or sustain existing suicide prevention activities.

History: En. Sec. 1, Ch. 471, L. 2007.

53-21-1102. Suicide reduction plan. (1) The department of public health and human services shall produce a biennial suicide reduction plan that must be submitted to the legislature as provided in 5-11-210.

(2) The plan must include:

(a) an assessment of both risk and protective factors impacting Montana's suicide rate;

(b) specific activities to reduce suicide;

(c) concrete targets for suicide reduction among various demographic populations, including but not limited to American Indians, veterans, and youth;

(d) measurable outcomes for all activities; and

(e) information on all existing state suicide reduction activities for all state agencies, as well as any known local or tribal suicide reduction activities.

(3) Upon the development of a suicide reduction plan draft, the department shall initiate a public comment period of not less than 21 days during which members of mental health advocacy groups and other interested parties may submit comments on and suggestions for the plan. The department shall produce a final plan, which takes public comment into account, no later than 60 days after the close of the comment period. The plan must be published on the department's website and submitted to the appropriate interim committee of the legislature, the director of the department, and the governor.

History: En. Sec. 2, Ch. 471, L. 2007.

53-21-1103. Suicide hotline. (1) The department of public health and human services is required to have a suicide crisis hotline available, staffed by paid, trained employees 24 hours a day and 365 days a year.

(2) The hotline may be operated by the department or by a qualified Montana-based, nonprofit organization.

(3) The department shall conduct an annual review of hotline utilization and operator performance.

History: En. Sec. 3, Ch. 471, L. 2007.

TITLE 61

MOTOR VEHICLES

CHAPTER 2

HIGHWAY SAFETY

Part 1

Traffic Safety Program

61-2-101. Purpose. To promote public safety, health, and welfare and to reduce traffic deaths, injuries, and property losses resulting from traffic accidents, it is in the public interest to establish a highway traffic safety program and provide for its administration. It is in the public interest to implement, modernize, and improve the following traffic safety activities: driver performance, including but not limited to driver education, driver testing to determine proficiency to operate motor vehicles; driver examinations, both physical and mental; driver licensing; pedestrian performance; establish an effective accident record system, including traffic accident investigation to determine the probable cause of accidents, injuries, and deaths; improve and establish a system of vehicle registration, vehicle operation, and vehicle inspection; assist in the improving of highway design and maintenance, including lighting, markings, and surface treatment to improve safety; establish an effective traffic control system; promote the adoption of uniform vehicle laws; provide for surveillance of traffic for detection and correction of high or potentially high accident locations; establish emergency services, including but not limited to communications, medical or mechanical assistance, and ambulance service for injured persons; and establish an effective compilation and storage program of reports and records through electronic data processing.

History: En. Sec. 1, Ch. 177, L. 1967; amd. Sec. 74, Ch. 348, L. 1974; R.C.M. 1947, 32-4601.

61-2-102. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Department" means the department of transportation.

(2) "Highway traffic safety program" means a program designed to reduce traffic accidents, deaths, injuries to persons, and damage to property. The program must be in accordance with uniform guidelines established pursuant to 23 U.S.C. 402, as amended, and may include defensive driving programs administered by the entity designated by the governor in 61-2-103. Nothing in this part restricts or prohibits the establishment of standards that enlarge or implement the federal standards.

(3) “Political subdivisions” means each county, incorporated city or town, and school district within the boundaries of the state.

History: En. Sec. 2, Ch. 177, L. 1967; amd. Sec. 75, Ch. 348, L. 1974; amd. Sec. 34, Ch. 213, L. 1975; R.C.M. 1947, 32-4602; amd. Sec. 8, Ch. 274, L. 1981; amd. Sec. 2, Ch. 538, L. 1995; amd. Sec. 3, Ch. 576, L. 2005.

61-2-103. Duties. (1) The governor is responsible for the administration of the highway traffic safety program. The governor may contract and do all other things necessary to secure the full benefits available to this state under the federal Highway Safety Act, 23 U.S.C. 401 through 403, and, in so doing, may cooperate with federal and state agencies, private and public organizations, and individuals to effectuate the purposes of that enactment and all amendments to it. The governor may appoint an administrator of the highway traffic safety program to carry out the governor’s responsibilities under this part. For purposes of participation in the federal Highway Safety Act, 23 U.S.C. 401 through 403, the governor shall designate the superintendent of public instruction as the state agency responsible for all aspects of federally assisted driver education and safety programs in the public schools, including the approval of the programs, certification of teachers, and the acceptance, allocation, and expenditure of funds for driver education in accordance with applicable federal laws and regulations. Nothing in this part interferes with the provisions of Title 20, chapter 7, part 5, or 20-9-603.

(2) The department shall:

- (a) advise and assist the governor in all matters of highway safety;
- (b) establish a continuing and adequate research program designed to determine the causes of accidents and effect a program of prevention; and
- (c) cooperate with the office of public instruction to provide support and maintenance of driver training facilities that comply with the federal Highway Safety Act, 23 U.S.C. 401 through 403.

(3) The department of justice shall:

- (a) establish a uniform system of driver licensing, including mental and physical standards; and
- (b) prescribe and establish safety regulations for motor vehicles and operators.

History: En. Sec. 5, Ch. 177, L. 1967; amd. Sec. 76, Ch. 348, L. 1974; amd. Sec. 35, Ch. 213, L. 1975; R.C.M. 1947, 32-4605; amd. Sec. 8, Ch. 274, L. 1981; amd. Sec. 1, Ch. 126, L. 1991; amd. Sec. 3, Ch. 538, L. 1995; amd. Sec. 1, Ch. 8, L. 2007.

Compiler’s Comments

2007 Amendment: Chapter 8 in (1) in two places after “Highway Safety Act” substituted “23 U.S.C. 401 through 403” for “of 1966”; in (2)(a) after “safety” deleted “and establish comprehensive training programs, including establishment and regulation of driver training schools, certification of the schools and instructors, and establishment of adult training and retraining programs”; deleted former (2)(b) that read: “(b) develop and procure practice driving facilities, simulators, and other teaching aids for school and driver training use”; inserted (2)(c) requiring cooperation with the office of public instruction to provide support and maintenance of federally compliant driver training facilities; and made minor changes in style. Amendment effective October 1, 2007.

61-2-104. Funds. The governor and the department may enter into contracts with the federal government to secure maximum federal appropriation. At least 40% of all federal funds received by the state shall be spent by the political subdivisions of the state in carrying out local approved highway traffic safety programs. Except as provided in this part, the governor may accept all gifts, money, and funds to implement the purposes of this part. The expenditure of funds, exclusive of the federal appropriation, shall be maintained at a level which shall not fall below the average level of the expenditures for the last 2 full fiscal years preceding July 1, 1966, as determined by the expenditures of state and political subdivisions.

History: En. Sec. 6, Ch. 177, L. 1967; amd. Sec. 77, Ch. 348, L. 1974; R.C.M. 1947, 32-4606.

61-2-105. Local programs. Except as provided in this part, all highway traffic safety programs of political subdivisions must be approved by the governor and no funds may be spent unless his approval is obtained. All local and state officials shall cooperate with the governor and department to accomplish the purposes of this part. The governor shall administer the highway traffic safety programs of this state and its political subdivisions in accordance with this part and federal rules.

History: En. Sec. 7, Ch. 177, L. 1967; amd. Sec. 78, Ch. 348, L. 1974; R.C.M. 1947, 32-4607.

61-2-106. County drinking and driving prevention program. (1) The governing body of a county may appoint a task force to study the problem of alcohol-related traffic accidents and recommend a program designed to:

- (a) prevent driving while under the influence of alcohol;
- (b) reduce alcohol-related traffic accidents; and
- (c) educate the public on the dangers of driving after consuming alcoholic beverages or other chemical substances that impair judgment or motor functions.

(2) A task force appointed under subsection (1) shall conduct its study and submit its recommendations within 6 months from the date it was appointed. Task force meetings are open to the public. The task force shall give notice by publication in the community meeting announcement section of a newspaper of general circulation in the county.

(3) The county governing body may by resolution adopt the recommendations of the task force appointed under subsection (1). The proposed program must be approved by the governor as provided in 61-2-105.

(4) The chairman of the task force shall submit to the county governing body:

- (a) a budget and a financial report for each fiscal year; and
- (b) an annual report containing but not limited to:
 - (i) an evaluation of the effectiveness of the program;
 - (ii) the number of arrests and convictions in the county for driving under the influence of alcohol and the sentences imposed for these convictions;
 - (iii) the number of alcohol-related traffic accidents in the county; and
 - (iv) any other information requested by the county governing body or considered appropriate by the task force.

(5) A copy of the annual report may be submitted to the department.

History: En. Sec. 1, Ch. 643, L. 1987; amd. Sec. 2, Ch. 751, L. 1991; amd. Sec. 1, Ch. 436, L. 1993.

61-2-107. License reinstatement fee to fund county drinking and driving prevention programs. (1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205 or 61-8-402 must remain suspended or revoked until the driver has paid to the department a fee of \$200 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) The department shall deposit one-half of the fees collected under subsection (1) in the general fund and the other half in an account in the state special revenue fund to be used for funding county drinking and driving prevention programs as provided in 61-2-108.

History: En. Sec. 2, Ch. 643, L. 1987; amd. Sec. 1, Ch. 55, L. 1989; amd. Sec. 1, Ch. 751, L. 1991; amd. Sec. 1, Ch. 5, Sp. L. January 1992; amd. Sec. 1, Ch. 492, L. 1993; amd. Sec. 1, Ch. 2, Sp. L. November 1993; amd. Sec. 63, Ch. 18, L. 1995; amd. Sec. 53, Ch. 509, L. 1995; amd. Sec. 1, Ch. 442, L. 2003.

61-2-108. Funding allocation for programs to prevent or reduce drinking and driving. If the county in which the violation or violations occurred has initiated and maintained a drinking and driving prevention program as provided in 61-2-106, the department shall transmit the county portion of the proceeds of the license reinstatement fees collected in that county to the county treasurer, as provided in 61-2-107(2), at the end of each quarter.

History: En. Sec. 3, Ch. 643, L. 1987; amd. Sec. 3, Ch. 751, L. 1991; amd. Sec. 2, Ch. 5, Sp. L. January 1992; amd. Sec. 245, Ch. 42, L. 1997.

CHAPTER 5 DRIVER'S LICENSES

Part 1 Licensing Provisions

61-5-101. Driver licensing responsibilities of department. (1) The department shall maintain a permanent place of business at the state capital and shall provide the necessary staff, facilities, and equipment for the purpose of providing driver's license services as required by this part.

(2) The department shall provide an examiner to administer a commercial driver's license or motor vehicle driver's license examination in any county of the state if the examination is previously scheduled through the department.

History: En. Sec. 1, Ch. 267, L. 1947; amd. Sec. 1, Ch. 141, L. 1951; amd. Sec. 1, Ch. 101, L. 1957; amd. Sec. 1, Ch. 42, L. 1969; R.C.M. 1947, 31-117; amd. Sec. 53, Ch. 421, L. 1979; amd. Sec. 1, Ch. 451, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 164, L. 1997; amd. Sec. 1, Ch. 358, L. 2005.

61-5-102. Drivers to be licensed — penalties. (1) (a) Except as provided in 61-5-104, a person may not drive a motor vehicle upon a highway in this state unless the person has a valid Montana driver's license. A person may not receive a Montana driver's license until the person surrenders to the department all valid driver's licenses issued by any other jurisdiction. A person may not have in the person's possession or under the person's control more than one valid Montana driver's license at any time.

(b) Except as provided in subsection (1)(c), the penalty for a first violation of this section is a fine of not more than \$500, imprisonment for not more than 6 months, or both a fine and imprisonment. The penalty for second and subsequent violations of this section is a fine of not more than \$500 and imprisonment for not less than 2 days or more than 6 months.

(c) A person who is eligible to hold a driver's license and has obtained a valid driver's license but has not renewed the license as provided in 61-5-111(3)(c) is not subject to the penalties in subsection (1)(b).

(2) (a) (i) Except as provided in subsection (2)(a)(ii), a license is not valid for the operation of a motorcycle unless the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement".

(ii) A motorcycle endorsement is not required for the operation of a motorcycle that is propelled by an electric motor or other device that transforms stored electrical energy into the motion of the vehicle, has a fully enclosed cab, is equipped with three wheels in contact with the ground, and is equipped with a seat and seatbelts.

(b) A license is not valid for the operation of a commercial motor vehicle unless the holder of the license has completed the requirements of 61-5-110, the license has been clearly marked with the words "commercial driver's license", and the license bears the proper endorsement for:

- (i) the specific vehicle type or types being operated; or
- (ii) the passengers or type or types of cargo being transported.

(3) When a city or town requires a licensed driver to obtain a local driving license or permit, a license or permit may not be issued unless the applicant presents a state driver's license valid under the provisions of this chapter.

History: En. Sec. 9, Ch. 267, L. 1947; amd. Sec. 1, Ch. 37, L. 1951; amd. Sec. 1, Ch. 79, L. 1957; amd. Sec. 1, Ch. 51, L. 1959; amd. Sec. 1, Ch. 211, L. 1961; R.C.M. 1947, 31-125(a) thru (c); (4)En. Sec. 9, Ch. 508, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 5, Ch. 443, L. 1987; amd. Sec. 3, Ch. 309, L. 1999; amd. Sec. 1, Ch. 415, L. 2001; amd. Sec. 6, Ch. 428, L. 2003; amd. Sec. 1, Ch. 79, L. 2005; amd. Sec. 4, Ch. 233, L. 2007; amd. Sec. 1, Ch. 462, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 233 in (2)(a)(i) at beginning inserted exception clause; inserted (2)(a)(ii) providing that a motorcycle endorsement is not required for the operation of electric motorcycles or certain other electric vehicles; and made minor changes in style. Amendment effective April 23, 2007.

Chapter 462 inserted (1)(b) providing penalty for first, second, and subsequent violations of section; inserted (1)(c) providing exception for person who has not renewed license; and made minor changes in style. Amendment effective October 1, 2007.

61-5-103. Residency requirement. (1) A person who has resided in Montana for more than 60 consecutive days is considered to be a resident for the purpose of being licensed to operate a motor vehicle and must be licensed under the laws of Montana before operating a motor vehicle.

(2) A person who has resided in Montana for more than 30 consecutive days:

(a) is considered to be a resident for the purpose of being licensed to operate a commercial motor vehicle; and

(b) must be licensed under the laws of Montana before operating any commercial motor vehicle.

(3) The department may issue a commercial driver's license to a person who is not a resident of Montana or domiciled in Montana only if:

(a) the person is domiciled in a foreign country with commercial driver's license standards, as determined by the federal motor carrier safety administration of the department of transportation, that are not similar to the testing and licensing standards provided in 49 CFR, part 383, subparts F, G, and H; or

(b) the person is domiciled in a state that is prohibited by the federal motor carrier safety administration from issuing commercial driver's licenses under 49 CFR 384.405.

History: En. Sec. 9, Ch. 267, L. 1947; amd. Sec. 1, Ch. 37, L. 1951; amd. Sec. 1, Ch. 79, L. 1957; amd. Sec. 1, Ch. 51, L. 1959; amd. Sec. 1, Ch. 211, L. 1961; R.C.M. 1947, 31-125(d); amd. Sec. 54, Ch. 421, L. 1979; amd. Sec. 9, Ch. 378, L. 1989; amd. Sec. 4, Ch. 309, L. 1999; amd. Sec. 13, Ch. 428, L. 2005; amd. Sec. 110, Ch. 596, L. 2005.

61-5-104. Exemptions. (1) The following persons are exempt from licensure under this chapter:

(a) a person who is a member of the armed forces of the United States while operating a motor vehicle owned by or leased to the United States government and being operated on official business;

(b) a person who is a member of the armed forces of the United States on active duty in Montana who holds a valid license issued by another state and the spouse of the person who holds a valid license issued by another state and who is not employed in Montana, except as a member of the armed forces. If a spouse of a member of the armed forces becomes gainfully employed in Montana, the spouse must be licensed, as required by 61-5-102, within 90 days of becoming employed.

(c) a person on active duty in the armed forces of the United States and in immediate possession of a valid license issued to that person in a foreign country by the armed forces of the United States, for a period of 45 days from the date of the person's return to the United States;

(d) a person who temporarily drives, operates, or moves a road machine, farm tractor, as defined in 61-9-102, or implement of husbandry for use in intrastate commerce on a highway;

(e) a person who is a locomotive engineer, assistant engineer, conductor, brake tender, railroad utility person, or other member of the crew of a railroad locomotive or train being operated upon rails, including operation on a railroad crossing a public street, road, or highway. A person employed as described in this subsection is not required to display a driver's license to a law enforcement officer in connection with the operation of a railroad train within Montana.

(f) a person who temporarily drives, operates, or moves an off-highway vehicle on a forest development road in this state, as defined in 61-8-110, that has been designated and approved for off-highway vehicle use by the United States forest service if the person:

(i) is under 16 years of age but at least 12 years of age; and

(ii) at the time of driving, operating, or moving the off-highway vehicle, has in the person's possession a certificate showing the successful completion of an off-highway vehicle safety education course approved by the department of fish, wildlife, and parks and is in the physical presence of a person who possesses a license issued under this chapter.

(2) A nonresident who is at least 15 years of age and who is in immediate possession of a valid operator's license issued to the nonresident by the nonresident's home state or country may operate a motor vehicle, except a commercial motor vehicle, in this state.

(3) (a) A nonresident who is in immediate possession of a valid commercial driver's license issued to the nonresident by the nonresident's home jurisdiction, in accordance with the licensing and testing standards of 49 CFR, part 383, may operate a commercial motor vehicle in this state.

(b) For the purpose of this chapter, "jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, a province or territory of Canada, or the federal district of Mexico.

(4) A nonresident who is at least 18 years of age, whose home state or country does not require the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than 90 days in any calendar year, if the motor vehicle is registered in the home state or country of the nonresident.

(5) (a) A driver's license issued under this chapter to a person who enters the United States armed forces, if valid and in effect at the time that the person enters the service, continues in effect so long as the service continues, unless the license is suspended, revoked, or canceled for a

cause as provided by law, and for up to 30 days following the date on which the licensee is honorably separated from the service.

(b) A person serving in the United States armed forces may renew the person's driver's license at any point of the person's service, and any renewed license continues in effect as long as the service continues, unless the license is suspended, revoked, or canceled for a cause as provided by law, and for up to 30 days following the date on which the licensee is honorably separated from the service.

(c) A person serving in the United States armed forces may apply for a Montana driver's license upon meeting the requirements in 61-5-103, and this license continues in effect as long as the service continues, unless the license is suspended, revoked, or canceled for a cause as provided by law, and for up to 30 days following the date on which the licensee is honorably separated from the service.

History: En. Sec. 10, Ch. 267, L. 1947; amd. Sec. 1, Ch. 95, L. 1955; amd. Sec. 1, Ch. 137, L. 1961; amd. Sec. 1, Ch. 133, L. 1969; R.C.M. 1947, 31-126; amd. Sec. 1, Ch. 454, L. 1985; amd. Sec. 6, Ch. 443, L. 1987; amd. Sec. 1, Ch. 536, L. 1991; amd. Sec. 3, Ch. 53, L. 1995; amd. Sec. 3, Ch. 105, L. 1997; amd. Sec. 2, Ch. 95, L. 1999; amd. Sec. 4, Ch. 207, L. 2001; amd. Sec. 14, Ch. 428, L. 2005; amd. Sec. 188, Ch. 542, L. 2005; amd. Sec. 1, Ch. 144, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 144 in (5)(a) deleted former second sentence that read: "During the 30-day period, the license is valid only when the license and the licensee's discharge, separation, leave, or furlough papers are in the licensee's immediate possession"; inserted (5)(b) allowing renewal of a driver's license at any time during the person's military service and providing that the renewed license remains in effect for up to 30 days after the person is honorably discharged; inserted (5)(c) providing that the driver's license of a person in the military who applies for a driver's license remains in effect as long as service continues and for up to 30 days after the person is honorably discharged; and made minor changes in style. Amendment effective October 1, 2007.

61-5-105. Who may not be licensed. The department may not issue a license under this chapter to a person:

- (1) who is under 16 years of age unless:
 - (a) the person is at least 15 years of age and has passed a driver's education course approved by the department and the superintendent of public instruction; or
 - (b) the person is at least 13 years of age and, because of individual hardship, to be determined by the department, needs a restricted license;
- (2) whose license or driving privilege is currently suspended, revoked, or canceled or who is disqualified from operating a commercial motor vehicle in this or any state, as evidenced by an ineligible status report from the national driver register, established under 49 U.S.C. 30302, or from the commercial driver's license information system, established under 49 U.S.C. 31309;
- (3) who is addicted to the use of alcohol or narcotic drugs;
- (4) who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who, at the time of application, has not been restored to competency by the methods provided by law;
- (5) who is required by this chapter to take an examination;
- (6) who has not deposited proof of financial responsibility when required under the provisions of chapter 6 of this title;
- (7) who has any condition characterized by lapse of consciousness or control, either temporary or prolonged, that is or may become chronic. However, the department may, in its discretion, issue a license to an otherwise qualified person suffering from a condition if the afflicted person's attending physician, licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102, attests in writing that the person's condition has stabilized and would not be likely to interfere with that person's ability to operate a motor vehicle safely and, if a commercial driver's license is involved, the person is physically qualified to operate a commercial motor vehicle under applicable state or federal regulations;
- (8) who lacks the functional ability, due to a physical or mental disability or limitation, to safely operate a motor vehicle on the highway;
- (9) who is not a resident of or domiciled in Montana except as provided in 61-5-103(3); or
- (10) who does not submit proof satisfactory to the department that the applicant's presence in the United States is authorized under federal law. The department may not accept as a primary source of identification a driver's license issued by a state if the state does not require that a driver licensed in that state be lawfully present in the United States under federal law.

History: En. Sec. 11, Ch. 267, L. 1947; amd. Sec. 1, Ch. 60, L. 1955; amd. Sec. 1, Ch. 227, L. 1965; amd. Sec. 14, Ch. 94, L. 1973; amd. Sec. 1, Ch. 178, L. 1973; R.C.M. 1947, 31-127; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 7, Ch. 443, L. 1987; amd. Sec. 1, Ch. 364, L. 1995; amd. Sec. 5, Ch. 309, L. 1999; amd. Sec. 5, Ch. 207, L. 2001; amd. Sec. 15, Ch. 428, L. 2005; amd. Sec. 1, Ch. 478, L. 2005; amd. Sec. 1, Ch. 242, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 242 in (7) in second sentence after "physician" inserted "licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102"; and made minor changes in style. Amendment effective October 1, 2007.

61-5-106. Instruction permits — traffic education learner licenses and permits — temporary licenses. (1) (a) The department may issue an instruction permit, which is valid for 1 year from the date of issuance, to a person satisfying the age requirements specified in 61-5-105(1) after the applicant has successfully passed the knowledge test and the vision examination, as provided in 61-5-110. Except as provided in subsections (1)(b) and (1)(c), an instruction permit entitles the permitholder, while in immediate possession of the permit and accompanied by a licensed driver seated beside the permitholder, to drive a motor vehicle other than a motorcycle upon the public highways.

(b) If the permitholder is under 18 years of age, the driver supervising the permitholder must be a parent or a legal guardian of the permitholder or, with the permission of the permitholder's parent or legal guardian, a licensed driver 18 years of age or older. Each occupant of a motor vehicle driven by a permitholder who is under 18 years of age shall wear a properly adjusted and fastened seatbelt or, if 61-9-420 applies, must be properly restrained in a child safety restraint.

(c) A person holding an instruction permit for a motorcycle may drive a motorcycle upon a public highway if the person is not carrying a passenger, has immediate possession of the permit, and is under the immediate and proximate visual supervision of one of the following persons, who must be at least 18 years of age if the permitholder is under 18 years of age:

(i) a motorcycle-endorsed licensed driver who is riding with the permitholder and who is operating a separate motorcycle or other motor vehicle; or

(ii) a licensed driver who is operating a separate motor vehicle if the permitholder has successfully completed a motorcycle safety training course through a cooperative driver testing program certified under 61-5-110.

(2) The department may issue a traffic education learner license, which is valid for 1 year from the date of issuance, to any person who is at least 14 ½ years of age and who has successfully completed or is successfully participating in a traffic education course approved by the department and the superintendent of public instruction and that is available to all who meet the age requirements specified in 20-7-503 and reside within the geographical boundaries of or attend a school in the school district that offers the course. A traffic education learner license entitles the licensee to operate a motor vehicle only when accompanied by an approved instructor or licensed parent or guardian and may be restricted to specific times or areas.

(3) (a) An instructor of a traffic education program approved by the department and by the superintendent of public instruction may issue a traffic education permit that is effective for a school year or more restricted period to an applicant who is enrolled in a traffic education program approved by the department and who meets the age requirements specified in 20-7-503.

(b) When in immediate possession of the traffic education permit, the permittee may operate on a designated highway or within a designated area:

(i) a motor vehicle when an approved instructor is seated beside the permittee; or

(ii) a motorcycle or quadricycle when under the immediate and proximate supervision of an approved instructor.

(4) The department may in its discretion issue a temporary driver's permit to an applicant for a driver's license permitting the applicant to operate a motor vehicle while the department is completing its investigation and determination of all facts relative to the applicant's right to receive a driver's license. The temporary driver's permit must be in the permittee's immediate possession while operating a motor vehicle, and it is invalid when the applicant's license has been issued or for good cause has been refused.

(5) The department may in its discretion issue a temporary commercial driver's license to an applicant permitting the applicant to operate a commercial motor vehicle while the

department is completing its investigation and determination of all facts relative to the applicant's right to receive a commercial driver's license. The temporary license must be in the applicant's immediate possession while operating a commercial motor vehicle and is invalid when the applicant's license has been issued or for good cause has been refused.

(6) The department may in its discretion issue a temporary medical assessment and rehabilitation driving permit, as provided in 61-5-120.

History: En. Sec. 13, Ch. 267, L. 1947; amd. Sec. 1, Ch. 120, L. 1961; amd. Sec. 1, Ch. 55, L. 1969; amd. Sec. 1, Ch. 271, L. 1973; amd. Sec. 1, Ch. 19, L. 1974; R.C.M. 1947, 31-129; amd. Sec. 1, Ch. 173, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 30, Ch. 516, L. 1985; amd. Sec. 8, Ch. 443, L. 1987; amd. Sec. 7, Ch. 195, L. 1993; amd. Sec. 2, Ch. 364, L. 1995; amd. Sec. 6, Ch. 309, L. 1999; amd. Sec. 6, Ch. 297, L. 2005.

61-5-107. Application for license, instruction permit, or motorcycle endorsement.

(1) Each application for an instruction permit, driver's license, commercial driver's license, or motorcycle endorsement must be made upon a form furnished by the department. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must include the full legal name, date of birth, sex, residence address of the applicant [and the applicant's social security number], must include a brief description of the applicant, and must provide the following additional information:

(a) the name of each jurisdiction in which the applicant has previously been licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the application;

(b) a certification from the applicant that the applicant is not currently subject to a suspension, revocation, cancellation, disqualification, or withdrawal of a previously issued driver's license or any driving privileges in another jurisdiction and that the applicant does not have a driver's license from another jurisdiction;

(c) a brief description of any physical or mental disability, limitation, or condition that impairs or may impair the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway;

(d) a brief description of any adaptive equipment or operational restrictions that the applicant relies upon or intends to rely upon to attain the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway, including the nature of the equipment or restrictions; and

(e) if the applicant is a foreign national whose presence in the United States is temporarily authorized under federal law, the expiration date of the official document issued to the applicant by the bureau of citizenship and immigration services of the department of homeland security authorizing the applicant's presence in the United States.

[(3) The department shall keep the applicant's social security number from this source confidential, except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise permitted by state law administered by the department and may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(4) (a) When an application is received from an applicant who is not ineligible for licensure under 61-5-105 and who was previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from each jurisdiction in which the applicant was licensed in the preceding 10-year period. The driving record may be transmitted manually or by electronic medium.

(b) When received, the driving records must be appended to the driver's record created and maintained in this state. The department may rely on information contained in driving records received under this section to determine the appropriate action to be taken against the applicant upon subsequent receipt of a report of a conviction or other conduct requiring suspension or revocation of a driver's license under state law.

(5) An individual who is under 26 years of age but at least 15 years of age and who is required to register in compliance with the federal Military Selective Service Act, 50 App. U.S.C. 453, must be provided an opportunity to fulfill those registration requirements in conjunction with an application for an instruction permit, driver's license, commercial driver's license, or state identification card. If under 18 years of age but at least 15 years of age, an individual must be provided an opportunity to be registered by the selective service system upon attaining 18 years of age. Any registration information supplied on the application must be transmitted by the department to the selective service system. (*Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.*)

History: En. Sec. 14, Ch. 267, L. 1947; amd. Sec. 1, Ch. 28, L. 1969; R.C.M. 1947, 31-130; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 31, Ch. 516, L. 1985; amd. Sec. 9, Ch. 443, L. 1987; amd. Sec. 1, Ch. 406, L. 1991; amd. Sec. 8, Ch. 195, L. 1993; amd. Sec. 3, Ch. 364, L. 1995; amd. Sec. 95, Ch. 552, L. 1997; amd. Sec. 2, Ch. 29, L. 1999; amd. Sec. 7, Ch. 309, L. 1999; amd. Sec. 7, Ch. 428, L. 2003; amd. Secs. 2, 15(3), Ch. 556, L. 2003; amd. Sec. 1, Ch. 180, L. 2005; amd. Sec. 16, Ch. 428, L. 2005; amd. Sec. 2, Ch. 478, L. 2005.

Compiler's Comments

Contingent Termination — Request for Federal Exemptions: Section 1, Ch. 27, L. 1999, revised sec. 104, Ch. 552, L. 1997, to contain the following contingent termination provisions and order that the department of public health and human services seek federal exemptions: "(1) [Sections 9, 11, 22 through 24, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date of the suspension if the federal government suspends federal payments to this state for this state's child support enforcement program and for this state's program relating to temporary assistance to needy families because of this state's failure to enact law as required by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2) [Sections 9, 11, 22 through 24, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date that a final decision is rendered in federal court invalidating the child support provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that one of the following provisions is no longer required by federal law because of repeal of or amendment to federal statutes that require that provision, the provision terminates on the date the certification takes effect:

- (a) [section 9] [40-5-922];
- (b) [section 11] [40-5-924];
- (c) [sections 22 through 24] [37-1-307, 40-1-107, and 40-4-105];
- (d) [section 95] [61-5-107];
- (e) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116].

(4) If the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminates, the code commissioner is instructed to renumber subsections, adjust internal references, and correct grammar and arrangement." Amendment effective February 18, 1999.

61-5-108. Application of minors — imputed liability. (1) The application of a person who is under 18 years of age for an instruction permit, driver's license, or medical assessment and rehabilitation driving permit must be signed and verified before a person authorized to administer oaths or an employee of the department by a parent of the applicant or, if none is available, by some other responsible adult who is willing to assume the obligation imposed under this chapter upon a person signing the application of a minor.

(2) Any negligence or willful misconduct of a minor who is under 18 years of age when driving a motor vehicle upon a highway must be imputed to a person who has signed the application of the minor for an instruction permit, driver's license, or medical and rehabilitation driving permit. The person who signs the application is jointly and severally liable with the minor for any damages caused by the negligence or willful misconduct unless a motor vehicle liability policy, as provided for in chapter 6 of this title, covering the minor is in effect, in which case there is no imputed liability as described in this section.

History: En. Sec. 15, Ch. 267, L. 1947; amd. Sec. 1, Ch. 140, L. 1961; R.C.M. 1947, 31-131; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 10, Ch. 443, L. 1987; amd. Sec. 2, Ch. 419, L. 1991; amd. Sec. 8, Ch. 309, L. 1999.

61-5-109. Release from liability. Any person who has signed the application of a minor for a license may thereafter file with the department a verified written request that the license of said minor so granted be canceled. Thereupon the department shall cancel the license of said minor and the person who signed the application of such minor shall be relieved from the

liability imposed under this chapter by reason of having signed such application on account of any subsequent negligence or willful misconduct of such minor in operating a motor vehicle.

History: En. Sec. 16, Ch. 267, L. 1947; R.C.M. 1947, 31-132; amd. Sec. 1, Ch. 503, L. 1985.

61-5-110. Records check of applicants — examination of applicants — cooperative driver testing programs. (1) Prior to examining an applicant for a driver's license, the department shall conduct a check of the applicant's driving record by querying the national driver register, established under 49 U.S.C. 30302, and the commercial driver's license information system, established under 49 U.S.C. 31309.

(2) (a) The department shall examine each applicant for a driver's license or motorcycle endorsement, except as otherwise provided in this section. The examination must include a test of the applicant's eyesight, a knowledge test examining the applicant's ability to read and understand highway signs and the applicant's knowledge of the traffic laws of this state, and, except as provided in 61-5-118, a road test or a skills test demonstrating the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle or motorcycle. The road test or skills test must be performed by the applicant in a motor vehicle that the applicant certifies is representative of the class and type of motor vehicle for which the applicant is seeking a license or endorsement.

(b) The knowledge test, road test, or skills test may be waived by the department upon certification of the applicant's successful completion of the test by a certified cooperative driver testing program, as provided in subsection (3) or by a certified third-party commercial driver testing program as provided in 61-5-118.

(3) The department is authorized to certify as a cooperative driver testing program any state-approved high school traffic education course offered by or in cooperation with a school district that employs an approved instructor who has current endorsement from the superintendent of public instruction as a teacher of traffic education or any motorcycle safety training course approved by the board of regents and that employs an approved instructor of motorcycle safety training and who agrees to:

(a) administer standardized knowledge and road tests or skills tests required by the department to students participating in the district's high school traffic education courses or motorcycle safety training courses approved by the board of regents;

(b) certify the test results to the department; and

(c) comply with regulations of the department, the superintendent of public instruction, and the board of regents.

(4) (a) Except as otherwise provided by law, a resident who has a valid driver's license issued by another jurisdiction may surrender that license for a Montana license of the same class, type, and endorsement upon payment of the required fees and successful completion of a vision examination. In addition, a resident surrendering a commercial driver's license issued by another jurisdiction shall successfully complete any examination required by federal regulations before being issued a commercial driver's license by the department.

(b) The department may require an applicant who surrenders a valid driver's license issued by another jurisdiction to submit to a knowledge and road or skills test if:

(i) the applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the surrendered license does not include readily discernible adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify a restriction imposed on the surrendered license.

(c) When a license from another jurisdiction is surrendered, the department shall notify the issuing agency from the other jurisdiction that the applicant has surrendered the license. If the applicant wants to retain the license from another jurisdiction for identification or other nondriving purposes, the department shall place a distinctive mark on the license, indicating that the license may be used for nondriving purposes only, and return the marked license to the applicant.

History: En. Sec. 18, Ch. 267, L. 1947; amd. Sec. 1, Ch. 408, L. 1975; R.C.M. 1947, 31-134(a); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 32, Ch. 516, L. 1985; amd. Sec. 11, Ch. 443, L. 1987; amd. Sec. 1, Ch. 297, L. 1991; amd.

Sec. 9, Ch. 195, L. 1993; amd. Secs. 4, 5, Ch. 53, L. 1995; amd. Secs. 4, 9, Ch. 364, L. 1995; amd. Sec. 11, Ch. 181, L. 1999; amd. Sec. 9, Ch. 309, L. 1999; amd. Sec. 6, Ch. 207, L. 2001; amd. Sec. 8, Ch. 428, L. 2003; amd. Sec. 2, Ch. 79, L. 2005; amd. Sec. 17, Ch. 428, L. 2005.

61-5-111. Contents of driver's license, renewal, renewal by mail, license expirations, grace period, and fees for licenses, permits, and endorsements — notice of expiration. (1) (a) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's license receipts. The department shall adopt necessary rules governing sales. In areas in which the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may appoint an agent to sell receipts.

(b) The department may enter into an authorized agent agreement with the county treasurer of any county in which the department no longer maintains a driver examination station for the purpose of providing driver's license renewal services.

(2) (a) The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to each qualifying applicant. The license must contain:

- (i) a full-face photograph of the licensee in the size and form prescribed by the department;
- (ii) a distinguishing number issued to the licensee;
- (iii) the full legal name, date of birth, Montana mailing address, and a brief description of the licensee; and
- (iv) either the licensee's customary signature or a digital reproduction of the licensee's customary signature.

(b) The department may not use the licensee's social security number as the distinguishing number unless the licensee expressly authorizes the use. A license is not valid until it is signed by the licensee.

(3) (a) When a person applies for renewal of a driver's license, the department shall conduct a records check in accordance with 61-5-110(1) to determine the applicant's eligibility status and shall test the applicant's eyesight. The department may also require the applicant to submit to a knowledge and road or skills test if:

- (i) the renewal applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and
- (ii) the expired or expiring license does not include adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or
- (iii) the applicant wants to remove or modify the restrictions stated on the expired or expiring license.

(b) In the case of a commercial driver's license, the department shall, if the information was not provided in a prior licensing cycle, require the renewal applicant to provide the name of each jurisdiction in which the applicant was previously licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the renewal application and may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 6 months before or 3 months after the expiration of the person's license. Except as provided in subsection (3)(d), a person seeking to renew a driver's license shall appear in person at a Montana driver's examination station.

(d) (i) Except as provided in subsections (3)(d)(iv) through (3)(d)(vi), a person may renew a driver's license by mail if the person certifies that the person is temporarily out of state and will not be returning to the state prior to the expiration of the license. A person may not renew by mail for a subsequent license term after a mail renewal, except that a spouse or dependent of a person stationed outside Montana on active military duty may renew a driver's license by mail for one additional consecutive term following a mail renewal.

(ii) An applicant who renews a driver's license by mail shall submit to the department an approved vision examination and a medical evaluation from a licensed physician, licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102, in addition to the fees required for renewal.

(iii) If the department does not have a digitized photograph or signature record of the renewal applicant from the expiring license, then the department may require the renewal applicant to submit a personal photograph and signature that meets the requirements prescribed by the department.

(iv) Except as provided in subsections (4)(b) and (4)(c), the term of a license renewed by mail is 8 years.

(v) The department may not renew a license by mail if:

(A) the records check conducted in accordance with 61-5-110(1) shows an ineligible license status for the applicant; or

(B) the applicant holds a commercial driver's license with a hazardous materials endorsement, the retention of which requires additional testing and a security threat assessment under 49 CFR, part 1572.

(vi) If a license was issued to a foreign national whose presence in the United States is temporarily authorized under federal law, the license may not be renewed by mail.

(e) The department shall mail a driver's license renewal notice no earlier than 60 days and no later than 30 days prior to the expiration date of a driver's license. Except as provided in 61-3-119 and 61-5-115, the department shall mail the notice to the Montana mailing address shown on the driver's license.

(4) (a) Except as provided in subsections (4)(b) through (4)(e), a license expires on the anniversary of the licensee's birthday 8 years or less after the date of issue or on the licensee's 75th birthday, whichever occurs first.

(b) A license issued to a person who is 75 years of age or older expires on the anniversary of the licensee's birthday 4 years or less after the date of issue.

(c) A license issued to a person who is under 21 years of age expires on the licensee's 21st birthday.

(d) (i) Except as provided in subsection (4)(d)(ii), a commercial driver's license expires on the anniversary of the licensee's birthday 5 years or less after the date of issue.

(ii) When a person obtains a Montana commercial driver's license with a hazardous materials endorsement after surrendering a comparable commercial driver's license with a hazardous materials endorsement from another licensing jurisdiction, the license expires on the anniversary of the licensee's birthday 5 years or less after the date of the issue of the surrendered license if, as reported in the commercial driver's license information system, a security threat assessment was performed on the person as a condition of issuance of the surrendered license.

(e) A license issued to a person who is a foreign national whose presence in the United States is temporarily authorized under federal law expires, as determined by the department, no later than the expiration date of the official document issued to the person by the bureau of citizenship and immigration services of the department of homeland security authorizing the person's presence in the United States.

(5) When the department issues a driver's license to a person under 18 years of age, the license must be clearly marked with a notation that conveys the restrictions imposed under 61-5-133.

(6) (a) Upon application for a driver's license or commercial driver's license and any combination of the specified endorsements, the following fees must be paid:

(i) driver's license, except a commercial driver's license — \$5 a year or fraction of a year;

(ii) motorcycle endorsement — 50 cents a year or fraction of a year;

(iii) commercial driver's license:

(A) interstate — \$10 a year or fraction of a year; or

(B) intrastate — \$8.50 a year or fraction of a year.

(b) A renewal notice for either a driver's license or a commercial driver's license is 50 cents.

History: (1) thru (6)En. Sec. 19, Ch. 267, L. 1947; amd. Sec. 1, Ch. 135, L. 1951; amd. Sec. 1, Ch. 130, L. 1953; amd. Sec. 1, Ch. 249, L. 1961; amd. Sec. 1, Ch. 228, L. 1963; amd. Sec. 1, Ch. 23, L. 1967; amd. Sec. 1, Ch. 288, L. 1971; amd. Sec. 4, Ch. 423, L. 1971; amd. Sec. 1, Ch. 409, L. 1975; Sec. 31-135, R.C.M. 1947; (7)En. Sec. 13, Ch. 199, L. 1943; Sec. 31-113, R.C.M. 1947; R.C.M. 1947, 31-113, 31-135(part); amd. Sec. 1, Ch. 361, L. 1979; amd. Sec. 55, Ch. 421, L. 1979; amd. Secs. 1, 2, Ch. 276, L. 1985; amd. Sec. 1, Ch. 277, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 33, Ch. 516, L. 1985; amd. Sec. 12, Ch. 443, L. 1987; amd. Sec. 10, Ch. 378, L. 1989; amd. Sec. 1, Ch. 726, L. 1991; amd. Sec. 10, Ch. 195, L. 1993; amd. Sec. 1, Ch. 26, Sp. L. November 1993; amd. Sec. 5, Ch. 364, L. 1995; amd. Sec. 3, Ch. 29, L. 1999; amd. Sec. 10, Ch. 309, L. 1999; amd. Sec. 7, Ch. 207, L. 2001; amd. Sec. 1, Ch.

251, L. 2003; amd. Sec. 9, Ch. 428, L. 2003; amd. Sec. 1, Ch. 558, L. 2003; amd. Sec. 1, Ch. 104, L. 2005; amd. Sec. 7, Ch. 297, L. 2005; amd. Sec. 18, Ch. 428, L. 2005; amd. Sec. 3, Ch. 478, L. 2005; amd. Sec. 111, Ch. 596, L. 2005; amd. Sec. 2, Ch. 242, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 242 in (3)(d)(ii) after "physician" inserted "licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102"; and made minor changes in style. Amendment effective October 1, 2007.

61-5-112. Types and classes of commercial driver's licenses — classification — rulemaking — reciprocity agreements. (1) The department shall adopt rules that it considers necessary for the safety and welfare of the traveling public governing the classification of commercial driver's licenses and related endorsements and the examination of commercial driver's license applicants and renewal applicants. The rules must:

(a) subject to the exceptions provided in this section, comport with the licensing standards and requirements of 49 CFR, part 383, the medical qualifications of 49 CFR, part 391, and the security threat assessment provisions of 49 CFR, part 1572;

(b) allow for the issuance of a type 2 (intrastate only) commercial driver's license in accordance with medical qualification and visual acuity standards prescribed by the department;

(c) allow for the issuance of a type 2 commercial driver's license to a person who is 18 years of age or older;

(d) allow for issuance of a seasonal commercial driver's license based on standards established by the department for the waiver of the knowledge and road or skills test for a qualified person employed in farm-related service industries who has a good driving record and sufficient prior driving experience;

(e) prescribe the operational and seasonal restrictions for a seasonal commercial driver's license;

(f) prescribe the requirements for the medical statement that must be submitted in order for a person to be qualified for a type 2 commercial driver's license; and

(g) prescribe the minimum standards for certification of a third-party commercial driver testing program and any test waiver under 61-5-118.

(2) The department is authorized to enter into reciprocal agreements with adjacent states that would allow certain drivers of vehicles transporting farm products, farm machinery, or farm supplies within 150 miles of a farm to operate without a commercial driver's license because the vehicles are not considered commercial motor vehicles as provided in 61-1-101(8)(b)(ii).

History: En. Sec. 12, Ch. 267, L. 1947; amd. Sec. 1, Ch. 26, L. 1969; amd. Sec. 15, Ch. 94, L. 1973; R.C.M. 1947, 31-128; amd. Sec. 56, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 13, Ch. 443, L. 1987; amd. Sec. 11, Ch. 195, L. 1993; amd. Sec. 11, Ch. 309, L. 1999; amd. Sec. 10, Ch. 428, L. 2003; amd. Sec. 19, Ch. 428, L. 2005; amd. Sec. 189, Ch. 542, L. 2005; amd. Sec. 55, Ch. 329, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 329 in (2) at end substituted "61-1-101(8)(b)(ii)" for "61-1-101(7)(b)(ii)". Amendment effective January 1, 2008.

61-5-113. Restricted licenses. (1) If, upon an applicant's completion of the vision, knowledge, and skills tests required under 61-5-110, 61-5-111, and 61-5-207, the department determines that an applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway depends on the use of adaptive equipment or operational restrictions, then the department shall include the appropriate restrictions on a license issued to the applicant. Once imposed, the restrictions may not be removed unless the department determines that the adaptive equipment or operational restrictions are no longer essential to the licensee's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway.

(2) The department may either issue a special restricted license or may include the restrictions on the usual license form.

(3) The department may upon receiving satisfactory evidence of a violation of the restrictions of a license or endorsement suspend or revoke the license. The licensee is entitled to a hearing as upon suspension or revocation under this chapter.

(4) It is a misdemeanor for a person to operate a motor vehicle in a manner in violation of the restrictions imposed in a restricted license.

History: En. Sec. 21, Ch. 267, L. 1947; R.C.M. 1947, 31-137; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 14, Ch. 443, L. 1987; amd. Sec. 12, Ch. 309, L. 1999.

61-5-114. Replacement license or permit. (1) If an instruction permit or driver's license issued under the provisions of this chapter is lost or destroyed or a person wants to update personal information contained on an instruction permit or a driver's license issued to the person, the person to whom the permit or license was issued may, upon the payment of a fee of \$10, obtain a replacement permit or license, upon furnishing proof satisfactory to the department that the permit or license has been lost or destroyed or that personal information has changed.

(2) If the hazardous materials endorsement on a commercial driver's license issued under the provisions of this chapter is revoked or removed pursuant to the authority provided in 61-5-221, the person to whom the license was issued shall surrender to the department the person's commercial driver's license with the hazardous materials endorsement and may obtain, upon making application and paying a \$10 fee, a replacement license that does not include a hazardous materials endorsement.

History: En. Sec. 22, Ch. 267, L. 1947; amd. Sec. 1, Ch. 36, L. 1953; amd. Sec. 16, Ch. 121, L. 1965; R.C.M. 1947, 31-138; amd. Sec. 2, Ch. 277, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 15, Ch. 443, L. 1987; amd. Sec. 2, Ch. 558, L. 2003; amd. Sec. 20, Ch. 428, L. 2005; amd. Secs. 112, 163, Ch. 596, L. 2005.

61-5-115. Notice of change of address. Whenever any person after applying for or receiving a driver's license moves from the address named in the application or in the issued license, the person shall within 10 days notify the department in writing or electronically by an approved automated interface of the old and new addresses and of the number of any license then held by the person.

History: En. Sec. 24, Ch. 267, L. 1947; R.C.M. 1947, 31-140; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 16, Ch. 443, L. 1987; amd. Sec. 113, Ch. 596, L. 2005.

61-5-116. License to be carried and exhibited on demand. Every licensee shall have his driver's license in his immediate possession at all times when operating a motor vehicle and shall display the same upon demand of a justice of the peace, a city or municipal judge, a peace officer, a highway patrol officer, or a field deputy or inspector of the department. However, no person charged with violating this section shall be convicted if he produces in court or the office of the arresting officer a driver's license theretofore issued to him and valid at the time of his arrest.

History: En. Sec. 20, Ch. 267, L. 1947; R.C.M. 1947, 31-136; amd. Sec. 4, Ch. 348, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 17, Ch. 443, L. 1987; amd. Sec. 1, Ch. 217, L. 1989.

61-5-117. Repealed. Sec. 20, Ch. 428, L. 2003.

History: En. Sec. 40, Ch. 443, L. 1987; amd. Sec. 75, Ch. 10, L. 1993; amd. Sec. 12, Ch. 195, L. 1993; amd. Sec. 7, Ch. 53, L. 1995.

61-5-118. Third-party commercial driver testing program — test waiver. (1) The department may certify as a third-party commercial driver testing program any company that:

(a) in the course of its commercial enterprise, customarily transports or hauls any goods, including agricultural commodities, in company-owned class A commercial motor vehicles as prescribed by federal regulations;

(b) regularly and continuously employs a minimum number of drivers. The department shall determine the minimum number of drivers and whether they are regularly and continuously employed by the company.

(c) has a permanent Montana mailing address and maintains a place of business in this state that includes at least one permanent, regularly occupied structure with facilities and equipment to conduct offstreet skills testing;

(d) employs at least one examiner with qualifications required by rules of the department; and

(e) complies with rules adopted by the department under 61-5-112.

(2) The road test or the skills test required by 61-5-110 may be waived by the department for a commercial driver's license applicant upon certification of the applicant's successful completion of the road test or the skills test by:

(a) a third-party commercial driver testing program certified under subsection (1); or

(b) a third-party commercial driver examiner from a jurisdiction that has a comparable third-party commercial driver testing program, as determined by the department.

(3) An examiner for a certified third-party commercial driver testing program may administer a road test or a skills test only to a company employee who has applied to the department for a commercial driver's license and who has passed the knowledge test required by 61-5-110 and by department or federal rules.

History: En. Sec. 6, Ch. 53, L. 1995; amd. Sec. 1, Ch. 292, L. 1999; amd. Sec. 11, Ch. 428, L. 2003.

61-5-119. Definitions. (1) For the purposes of 61-5-120, "driver rehabilitation specialist" means a person who:

(a) possesses current certification from the association of driver educators for the disabled as a driver rehabilitation specialist; or

(b) (i) provides comprehensive services in the clinical evaluation of the abilities of a person with a disability to safely operate a motor vehicle, utilizing, among other things, wheelchair and seating assessment, motor vehicle modification prescription, and driver education;

(ii) (A) possesses a bachelor's degree in rehabilitation, education, or health and safety, in physical, occupational, or recreational therapy, or in a related profession; or

(B) has an equivalent of 8 years of experience in driver rehabilitation and education; and

(iii) has at least 1 year of experience in the area of driver evaluation and training for individuals with disabilities.

(2) For the purposes of this chapter, unless the context requires otherwise, "cancellation" means that a driver's license is annulled and terminated because of some error or defect or because the licensee is no longer entitled to the license. Except as provided in 61-5-201(3), the cancellation of a license is without prejudice and application for a new license may be made at any time after cancellation.

History: En. Sec. 1, Ch. 309, L. 1999; amd. Secs. 21, 36, Ch. 428, L. 2005; amd. Sec. 190, Ch. 542, L. 2005.

61-5-120. Medical assessment and rehabilitation driving permit. (1) Upon the written request of a licensed physician, licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102, on a form prescribed by the department, the department may authorize a driver rehabilitation specialist to issue a temporary medical assessment and rehabilitation driving permit to a person who is not licensed to drive or whose license has expired under the provisions of this chapter for the purpose of driver assessment, rehabilitation, and training.

(2) The temporary permit may be issued only to a person who is 16 years of age or older.

(3) The permit is valid for up to 6 weeks, beginning with the date of the first evaluation of the permitholder by the driver rehabilitation specialist. The driver rehabilitation specialist shall sign and date the permit at the time of the first evaluation.

(4) The permit is valid only when the permitholder is operating a motor vehicle under the immediate supervision of the driver rehabilitation specialist during the permitholder's participation in an actual in-vehicle evaluation process.

(5) The department may extend the duration of a medical assessment and rehabilitation permit for an additional 6-week period if the driver rehabilitation specialist, licensed physician, licensed physician assistant, or advanced practice registered nurse certifies that the permitholder needs additional time to complete the driver assessment, rehabilitation, and training process.

History: En. Sec. 2, Ch. 309, L. 1999; amd. Sec. 3, Ch. 242, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 242 in (1) near beginning and in (5) near middle after "physician" inserted reference to licensed physician assistant or advanced practice registered nurse; and made minor changes in style. Amendment effective October 1, 2007.

61-5-121. Disposition of fees. (1) Except as provided in subsection (3), the disposition of the fees from driver's licenses, motorcycle endorsements, commercial driver's licenses, and replacement driver's licenses provided for in 61-5-114 is as follows:

(a) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 2.5% of each driver's license fee, 2.5% of each commercial driver's license fee, and 3.75% of each replacement driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(a)(i) must be deposited into the state general fund.

(b) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 3.34% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the state general fund.

(c) The amount of 20.7% of each driver's license fee, 16.94% of each commercial driver's license fee, and 8.75% of each replacement driver's license fee must be deposited into the state traffic education account.

(d) In addition to the amounts deposited pursuant to subsections (1)(a)(ii) and (1)(b)(ii), the remainder of each driver's license fee, each commercial driver's license fee, and each replacement driver's license fee must be deposited into the state general fund.

(e) The amount of 63.46% of each motorcycle endorsement fee must be deposited into the state motorcycle safety account in the state special revenue fund, and the amount of 33.2% of each motorcycle endorsement fee must be deposited into the state general fund.

(2) (a) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and replacement driver's licenses are collected by a county treasurer or other agent of the department, the county treasurer or agent shall deposit the amounts provided for in subsections (1)(a)(i) and (1)(b)(i) into the county general fund. The county treasurer or agent shall then remit all remaining fees to the state for deposit as provided in subsections (1)(c) through (1)(e).

(b) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and replacement driver's licenses are collected by the department, it shall deposit the fees as provided in subsections (1)(a)(ii), (1)(b)(ii), and (1)(c) through (1)(e).

(3) The fee for a renewal notice, whether collected by a county treasurer, an authorized agent, or the department, must be remitted to the department for deposit in the state general fund.

History: En. Sec. 3, Ch. 277, L. 1985; amd. Sec. 13, Ch. 503, L. 1985; amd. Sec. 115, Ch. 370, L. 1987; amd. Sec. 18, Ch. 443, L. 1987; amd. Sec. 4, Ch. 62, L. 1989; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1, Ch. 275, L. 1989; amd. Sec. 12, Ch. 398, L. 1989; amd. Sec. 2, Ch. 584, L. 1991; amd. Sec. 9, Ch. 701, L. 1991; amd. Sec. 2, Ch. 726, L. 1991; amd. Secs. 3, 5, Ch. 5, Sp. L. January 1992; amd. Sec. 5, Ch. 11, Sp. L. July 1992; amd. Sec. 13, Ch. 195, L. 1993; amd. Sec. 2, Ch. 39, Sp. L. November 1993; amd. Sec. 56, Ch. 509, L. 1995; amd. Sec. 250, Ch. 42, L. 1997; amd. Sec. 52, Ch. 422, L. 1997; amd. Sec. 12, Ch. 181, L. 1999; amd. Sec. 30, Ch. 257, L. 2001; amd. Sec. 3, Ch. 558, L. 2003; amd. Sec. 10, Ch. 464, L. 2005; amd. Sec. 164, Ch. 596, L. 2005; amd. Sec. 1, Ch. 6, L. 2007; amd. Sec. 63, Ch. 44, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 6 deleted former (1)(a) that read: "(a) The amount of 22.3% of each driver's license fee, 18.25% of each commercial driver's license fee, and 25% of each replacement driver's license fee must be deposited into an account in the state special revenue fund. Upon receiving an appropriation, the department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404. The department shall report the amount deposited and transferred under this subsection (1)(a) to the legislative finance committee by October 31 of the year preceding each regular session of the legislature"; and made minor changes in style. Amendment effective February 16, 2007.

Chapter 44 in (2)(a) near beginning of first sentence and in (2)(b) near middle after "endorsements, and" substituted "replacement" for "duplicate". Amendment effective October 1, 2007.

61-5-122 through 61-5-124 reserved.

61-5-125. Authority of department — rulemaking authority. (1) The department shall administer and enforce the provisions of this chapter.

(2) The department shall adopt rules setting standards to govern driver's license examinations and reexaminations. The rules:

(a) must specifically address the functional abilities and skills required for a person to exercise ordinary and reasonable control in the safe operation of a motor vehicle on a highway;

(b) must include minimum uncorrected or corrected visual acuity requirements for both unrestricted and restricted licensure and may include minimum field of vision and depth perception requirements and hearing requirements for unrestricted and restricted licensure;

(c) may direct the design of one or more types of skills tests to assess an applicant's or licensee's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway. A skills test may consist of:

(i) a comprehensive assessment of a person's functional abilities by means of an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle; or

(ii) a more limited assessment of a person's functional abilities, conducted at the discretion of the department, as related to a specific physical or mental condition or conditions or a request for reexamination;

(d) must include operational restrictions based upon the visual acuity of an applicant or licensee;

(e) may take into consideration any nationally recognized standards or recommended practices for assessment of a person's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway;

(f) must include appropriate licensing criteria relating to the use of adaptive equipment or operational limits that can be readily discerned by law enforcement or a licensing agency in another jurisdiction;

(g) may be derived from medical guidelines and information compiled by driver licensing medical advisory or review boards from other jurisdictions, as well as information received from advocacy groups for persons with disabilities and senior citizens; and

(h) except as provided in 61-5-105, may not use a person's age or physical or mental disability, limitation, or condition as a justification for denial of a license.

(3) The department may adopt additional rules governing:

(a) acceptable methods of proof of identification that must be supplied by a person upon application for or renewal of a driver's license;

(b) issuance of a hardship license to an underage applicant;

(c) the cancellation of a driver's license upon receipt of an insufficient funds check in payment of license fees;

(d) circumstances under which the department may issue a probationary license to a person whose license has been suspended or revoked or a person whose license is subject to a discretionary suspension or revocation;

(e) restrictions to be imposed upon a probationary license;

(f) renewal of a driver's license by a person in the military assigned to active duty who had a valid Montana driver's license at the time of entering active duty;

(g) issuance of a replacement driver's license; and

(h) a determination of the driver's license expiration date, minimum and maximum license terms, and license renewal requirements for a driver's license issued to a person who is a foreign national whose presence in the United States is temporarily authorized under federal law.

History: En. Sec. 1, Ch. 74, L. 1987; amd. Sec. 13, Ch. 309, L. 1999; amd. Sec. 23, Ch. 428, L. 2005; amd. Sec. 4, Ch. 478, L. 2005.

61-5-126. Providing information to selective service system. At the request of the director of the selective service system, provided for in 50 App. U.S.C. 460, the department shall provide a list of persons born in specified years who are holders of driver's licenses for the exclusive purpose of ensuring compliance with the military draft registration requirements of the federal Military Selective Service Act (50 App. U.S.C. 451, et seq.). The department shall notify the persons that information regarding them was released to the selective service system. The department may not provide the selective service system with the social security or driver's license numbers of persons on the list for any purpose.

History: En. Sec. 2, Ch. 663, L. 1989; amd. Sec. 251, Ch. 42, L. 1997.

61-5-127. Providing lists of licensed drivers and holders of Montana identification cards to clerks of district court — jury selection purposes. (1) On the second Monday of April of each year, the department shall submit to the secretary of state a list, prepared from the department's databases of licensed drivers and holders of Montana identification cards, showing the name, address, and date of birth of all licensed drivers and holders of Montana identification cards, authorized by 61-12-501, who are 18 years of age or older and whose address is in that county. The list must be compiled on a county-by-county basis and be further divided by the city of residence of the persons named on the list to enable the drawing of lists for city courts that are composed of only those residents living within a city's

jurisdiction. The list must be provided for the exclusive purpose of making a list of persons to serve as trial jurors for the ensuing year.

(2) The list submitted by the department under subsection (1) must be certified by the attorney general or the attorney general's designee.

(3) The department may not provide the social security or driver's license numbers of persons on the list for any purpose.

History: En. Sec. 1, Ch. 441, L. 2003; amd. Sec. 5, Ch. 133, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 133 in (1) in first sentence after "second Monday of" substituted "April" for "May" and after "submit to the" substituted "secretary of state" for "clerk of the district court of each county". Amendment effective April 5, 2007.

61-5-128. Legislative finding and direction to state agency not to implement REAL ID Act. (1) The legislature finds that the enactment into law by the U.S. congress of the REAL ID Act of 2005, as part of Public Law 109-13, is inimical to the security and well-being of the people of Montana, will cause unneeded expense and inconvenience to those people, and was adopted by the U.S. congress in violation of the principles of federalism contained in the 10th amendment to the U.S. constitution.

(2) The state of Montana will not participate in the implementation of the REAL ID Act of 2005. The department, including the motor vehicle division of the department, is directed not to implement the provisions of the REAL ID Act of 2005 and to report to the governor any attempt by agencies or agents of the U.S. department of homeland security to secure the implementation of the REAL ID Act of 2005 through the operations of that division and department.

History: En. Sec. 1, Ch. 198, L. 2007.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

61-5-129 and 61-5-130 reserved.

61-5-131. Purpose. The purpose of 61-5-131 through 61-5-135 is to create a graduated driver's licensing program that will allow persons under 18 years of age to progressively develop and improve their driving skills in the safest possible environment and that will improve highway safety by reducing the disproportionately high incidence of motor vehicle accidents involving minors.

History: En. Sec. 1, Ch. 297, L. 2005.

61-5-132. Prerequisites for issuance of driver's license to minor. (1) The department may issue a driver's license, subject to the restrictions of 61-5-133, to a person under 18 years of age if the person:

(a) has held an instruction permit or traffic education learner's license for a period of not less than 6 months;

(b) has passed a road test or a skills test, as provided in 61-5-110;

(c) presents written certification from the person's parent or legal guardian that states that the person has had at least 50 hours of driving experience, 10 of which were at night, during which the person was supervised by a parent, a legal guardian, or a person at least 18 years of age, with the consent of the parent or legal guardian, who had a valid driver's license; and

(d) presents written certification from the person's parent or legal guardian that states that, during the 6-month period immediately preceding application for a driver's license, the person has not been convicted of a traffic violation or convicted of or adjudicated for an offense involving the use of alcohol or drugs and the person has no pending traffic, alcohol, or drug citations.

(2) If a parent or a legal guardian for a person under 18 years of age cannot certify that the person has a 6-month conviction-free record for traffic, alcohol, and drug violations and no pending traffic, alcohol, or drug citations, the department may extend the person's instruction permit or traffic education learner's license for an additional 1-year period or until the person's 18th birthday, whichever occurs first.

(3) (a) The requirements of subsections (1)(a) through (1)(c) do not apply to a person under 18 years of age who has been licensed in another state for at least 6 months and surrenders a valid driver's license from that state.

(b) The requirements of subsection (1)(c) do not apply to a person under 18 years of age who, at the time of application for a driver's license, is an enrollee of a job corps program located in Montana. The department may require the applicant to provide current documentation of the applicant's job corps program enrollment status.

History: En. Sec. 2, Ch. 297, L. 2005.

61-5-133. First year restrictions on driver's license issued to minor. (1) A driver's license issued to a person who is under 18 years of age is subject to the following restrictions for 1 year from the date of issuance of the license or until the person is 18 years of age, whichever occurs first:

(a) A restricted licensee may not operate a motor vehicle, required by 61-9-409 to be equipped with seatbelts, unless each occupant of the motor vehicle is wearing a seatbelt, as defined in 61-13-102, or is properly restrained, as required under 61-9-420. The number of motor vehicle occupants may not exceed the number of seatbelts with which the motor vehicle is equipped.

(b) A restricted licensee may not operate a motor vehicle between the hours of 11 p.m. and 5 a.m. unless the restricted licensee is:

(i) accompanied by a licensed driver who is 18 years of age or older or, if the restricted licensee is operating a motorcycle, the restricted licensee is under the immediate and proximate visual supervision of a licensed driver who is 18 years of age or older and who is riding with the licensee and is operating a separate motorcycle or other motor vehicle;

(ii) driving to the restricted licensee's place of employment from the restricted licensee's residence, is returning to the restricted licensee's residence from the restricted licensee's place of employment, or is driving in the course and scope of employment;

(iii) driving from the restricted licensee's residence to a school-sponsored event at a school attended by the restricted licensee, including any site for school-provided transportation to and from the event, or is returning from the event or site to the restricted licensee's residence;

(iv) driving from the restricted licensee's residence to an event sponsored by a religious organization or is returning from the event to the restricted licensee's residence;

(v) driving for a purpose related to a medical emergency, fire emergency, or law enforcement-related emergency;

(vi) driving for the sole purpose of transporting farm or ranch products, machinery, or supplies within 150 miles of a farm or ranch headquarters;

(vii) an emancipated minor; or

(viii) driving under a specific authorization for a specific purpose from the restricted licensee's parent or legal guardian. A peace officer may verify the authorization by contacting the parent or legal guardian.

(c) (i) For the first 6 months of the 1-year restriction period, a restricted licensee may not operate a motor vehicle with more than one passenger who is under 18 years of age unless:

(A) the restricted licensee is supervised by a licensed driver who is at least 18 years of age; or

(B) the additional passengers under 18 years of age are members of the restricted licensee's family.

(ii) For the second 6 months of the 1-year restriction period, a restricted licensee may not operate a motor vehicle with more than three passengers who are under 18 years of age unless:

(A) the restricted licensee is supervised by a licensed driver who is at least 18 years of age; or

(B) the additional passengers under 18 years of age are members of the licensee's family.

(iii) For the first 6 months of the 1-year restriction period, a restricted licensee may not operate a motorcycle with a passenger who is under 18 years of age.

(2) For purposes of this section, the term "restricted licensee" includes a person under 18 years of age who holds a motorcycle-only endorsement issued by the department and the term "motor vehicle" includes a motorcycle, except when otherwise noted.

History: En. Sec. 3, Ch. 297, L. 2005.

61-5-134. Operation of motor vehicle by minor in violation of restricted first-year license — penalty. (1) A person whose driver's license is restricted under 61-5-133 may not

operate a motor vehicle, including a motorcycle, in violation of a restriction imposed under that section.

(2) A person convicted under this section shall be ordered to perform not less than 20 hours or more than 60 hours of community service.

(3) Upon receipt of a report of a second or subsequent conviction under this section, the department shall suspend the person's driver's license for 6 months. A probationary driver's license may not be issued during the period of suspension.

History: En. Sec. 4, Ch. 297, L. 2005.

61-5-135. Education on distracted driving. (1) The department, in consultation with the superintendent of public instruction, shall encourage schools providing traffic education to include in their traffic education curriculum information regarding the dangers of physical and cognitive distractions while driving.

(2) To reduce the risks for novice drivers, the department shall include in its publications intended for novice drivers information concerning the dangers of physical and cognitive distractions while driving, including but not limited to mental inattentiveness because of stress, fatigue, heightened emotion, conversation with passengers, stereo or climate control adjustment, food and drink, use of electronic devices, and personal grooming.

History: En. Sec. 5, Ch. 297, L. 2005.

Part 2

Revocation, Suspension, or Cancellation of Licenses

61-5-201. Authority of department to cancel license. (1) The department may cancel a driver's license if it has reasonable grounds to believe that:

- (a) the licensee was not entitled to the issuance;
- (b) since the issuance, the licensee has become ineligible as determined pursuant to the provisions of 61-5-105; or
- (c) the licensee failed to give the required or correct information in the licensee's application or committed any fraud in making the application.

(2) Upon cancellation, the licensee shall surrender the canceled license to the department.

(3) A person whose driver's license is canceled because the person failed to give the required or correct information on the application or committed any fraud in making the application is disqualified from operating a commercial motor vehicle for a period of 60 days from the date of the cancellation.

History: En. Sec. 26, Ch. 267, L. 1947; amd. Sec. 1, Ch. 219, L. 1973; R.C.M. 1947, 31-142; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 19, Ch. 443, L. 1987; amd. Sec. 14, Ch. 195, L. 1993; amd. Sec. 24, Ch. 428, L. 2005.

61-5-202. Cancellation of license upon death of person signing minor's application. The department upon receipt of satisfactory evidence of the death of the persons who signed the application of a minor for a license shall cancel such license and shall not issue a new license until such time as a new application, duly signed and verified, is made as required by this chapter. This provision shall not apply in the event the minor has attained the age of 18 years.

History: En. Sec. 17, Ch. 267, L. 1947; R.C.M. 1947, 31-133; amd. Sec. 1, Ch. 503, L. 1985.

61-5-203. Suspending privileges of nonresidents and unlicensed persons. (1) The privilege of driving a motor vehicle on the highways of this state given to a nonresident pursuant to 61-5-104(2) through (4) is subject to suspension or revocation by the department in like manner and for like causes as a driver's license issued under this chapter.

(2) An unlicensed person's privilege to apply for and be issued a driver's license in this state is subject to suspension or revocation by the department in like manner and for like causes as a driver's license issued under this chapter.

History: En. Sec. 27, Ch. 267, L. 1947; R.C.M. 1947, 31-143(a); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 20, Ch. 443, L. 1987; amd. Sec. 15, Ch. 195, L. 1993; amd. Sec. 2, Ch. 83, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 83 in (1) inserted "pursuant to 61-5-104(2) through (4)" and at end after "this chapter" deleted "may be suspended or revoked"; inserted (2) regarding suspension or revocation of unlicensed person's privilege to apply for and be issued license; and made minor changes in style. Amendment effective March 30, 2007.

Retroactive Applicability: Section 5, Ch. 83, L. 2007, provided: “[Sections 1 and 2] [61-1-101 and 61-5-203] apply retroactively, within the meaning of 1-2-109, to any suspension or revocation imposed against an unlicensed person prior to [the effective date of this act].” Effective March 30, 2007.

61-5-204. Suspending resident's license upon conviction in another state. The department may suspend or revoke the driver's license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice of the conviction of the person in another jurisdiction of an offense in that jurisdiction which, if committed in this state, would be grounds for the suspension or revocation of the driver's license.

History: En. Sec. 28, Ch. 267, L. 1947; R.C.M. 1947, 31-144; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 21, Ch. 443, L. 1987; amd. Sec. 12, Ch. 378, L. 1989; amd. Sec. 16, Ch. 195, L. 1993.

61-5-205. Mandatory revocation or suspension of license upon certain convictions — duration of action — exceptions. (1) The department shall revoke an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

- (a) negligent homicide resulting from the operation of a motor vehicle;
- (b) any felony in the commission of which a motor vehicle is used;
- (c) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;
- (d) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;

- (e) fleeing from or eluding a peace officer; or
- (f) negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.

(2) The department shall suspend an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

- (a) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or operating a motor vehicle with a blood alcohol concentration of 0.08 or more;

- (b) three reckless driving offenses committed within a period of 12 months; or

- (c) a theft offense under 45-6-301 if the theft consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense.

(3) A revocation under subsections (1)(a), (1)(b), and (1)(d) through (1)(f) must be for a period of 1 year. A revocation under subsection (1)(c) must be for a period of 2 years if the offender received a felony conviction under 61-7-103.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a suspension under subsection (2) must be for a period of 1 year.

- (b) A suspension under subsection (2)(a) must be for the period set forth in 61-5-208(2)(b).

- (c) A suspension under subsection (2)(c) must be for one of the following periods:

- (i) 30 days for a first offense;
- (ii) 6 months for a second offense; and
- (iii) 1 year for a third or subsequent offense.

History: En. Sec. 30, Ch. 267, L. 1947; amd. Sec. 1, Ch. 192, L. 1957; amd. Sec. 1, Ch. 125, L. 1961; amd. Sec. 2, Ch. 155, L. 1969; amd. Sec. 47, Ch. 359, L. 1977; amd. Sec. 2, Ch. 430, L. 1977; R.C.M. 1947, 31-146; amd. Sec. 1, Ch. 698, L. 1983; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 22, Ch. 443, L. 1987; amd. Sec. 2, Ch. 612, L. 1987; amd. Sec. 1, Ch. 335, L. 1989; amd. Sec. 17, Ch. 195, L. 1993; amd. Sec. 1, Ch. 224, L. 2001; amd. Sec. 3, Ch. 563, L. 2001; amd. Sec. 2, Ch. 379, L. 2003; amd. Secs. 3, 15(1), Ch. 556, L. 2003; amd. Sec. 1, Ch. 145, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 145 in (3) in first sentence after “under” substituted “subsections (1)(a), (1)(b), and (1)(d) through (1)(f)” for “subsection (1)” and inserted second sentence providing for a revocation period of 2 years if the offender received a felony conviction under 61-7-103. Amendment effective October 1, 2007.

61-5-206. Authority of department to suspend license or driving privilege — right to hearing. (1) The department may suspend the driver's license or driving privilege of a driver without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

(a) has committed or permitted an unlawful or fraudulent use of the license as specified in 61-5-302;

(b) has falsified the licensee's date of birth on the application for a driver's license;

(c) is under 21 years of age and has altered the licensee's or another's driver's license, identification card, or tribal identification card to obtain alcohol; or

(d) has authorized another to use the licensee's driver's license, identification card, or tribal identification card to obtain alcohol.

(2) If the department suspends a driver's license under 61-5-207 or this section or reinstates a license suspension or revocation upon conviction or forfeiture of bail not vacated of any traffic violation by a person who holds a probationary driver's license under 61-2-302, the department shall immediately notify the licensee in writing and upon the licensee's request shall afford the licensee an opportunity for a hearing as early as practical, within 20 days after receipt of the request, in the county in which the licensee resides unless the department and the licensee agree that the hearing may be held in some other county. At the hearing, the department through its authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. At the hearing, the department shall either rescind its order of suspension or, for good cause, may affirm, reduce, or extend the period of suspension of the license.

History: En. Sec. 31, Ch. 267, L. 1947; amd. Sec. 1, Ch. 101, L. 1961; amd. Sec. 1, Ch. 137, L. 1969; R.C.M. 1947, 31-147; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 244, L. 1987; amd. Sec. 23, Ch. 443, L. 1987; amd. Sec. 1, Ch. 471, L. 1991; amd. Sec. 18, Ch. 195, L. 1993; amd. Sec. 2, Ch. 218, L. 2001; amd. Sec. 4, Ch. 556, L. 2003; amd. Sec. 115, Ch. 596, L. 2005; amd. Sec. 10, Ch. 180, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 180 in (1)(c) and (1)(d) near end inserted "or tribal identification card"; and made minor changes in style. Amendment effective October 1, 2007.

61-5-207. Reexamination or medical evaluation — when required. (1) If the department receives reliable evidence that a licensed driver lacks the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway, the department may, upon written notice of at least 5 days to the licensee, require the licensee to obtain a medical evaluation from a licensed physician, licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102, or submit to one or more tests customarily conducted by the department for licensure under 61-5-110.

(2) Upon the review of a medical evaluation, the conclusion of testing, or both, the department may:

(a) impose restrictions on the license, as provided in 61-5-113, that are appropriate to the licensee's acknowledged or demonstrated functional abilities;

(b) suspend the license indefinitely based upon a licensee's inability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; or

(c) take no action modifying the license or placing restrictions on the licensee.

(3) The age of a licensee, by itself, does not constitute evidence of a condition requiring a reexamination or a medical evaluation.

(4) A suspension under this section continues in effect until evidence satisfactory to the department establishes that the licensee has regained the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on a highway.

(5) Refusal or neglect of the licensee to obtain a medical evaluation from a licensed physician, licensed physician assistant, or advanced practice registered nurse or submit to testing as required by the department is grounds for suspension of the person's license.

History: En. Sec. 32, Ch. 267, L. 1947; R.C.M. 1947, 31-148; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 24, Ch. 443, L. 1987; amd. Sec. 3, Ch. 419, L. 1991; amd. Sec. 19, Ch. 195, L. 1993; amd. Sec. 14, Ch. 309, L. 1999; amd. Sec. 4, Ch. 242, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 242 in (1) near end and in (5) near middle after "physician" inserted reference to licensed physician assistant or advanced practice registered nurse; in (3) at end deleted "by a licensed physician"; and made minor changes in style. Amendment effective October 1, 2007.

61-5-208. Period of suspension or revocation — limitation on issuance of probationary license — notation on driver's license. (1) The department may not suspend

or revoke a driver's license or privilege to drive a motor vehicle on the public highways, except as permitted by law.

(2) (a) Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) When a person is convicted or forfeits bail or collateral not vacated for a first offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for a first offense of operation of a motor vehicle by a person with alcohol concentration of 0.08 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall suspend the license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension. If the 1-year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as ordered by the sentencing court, the license suspension remains in effect until the course, treatment, or both, are completed.

(c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

(3) (a) Except as provided in subsection (3)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

(4) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

(5) (a) A driver's license that is issued after a license revocation to a person described in subsection (5)(b) must be clearly marked with a notation that conveys the term of the person's probation restrictions.

(b) The provisions of subsection (5)(a) apply to a license issued to a person for whom a court has reported a felony conviction under 61-8-731, the judgment for which has as a condition of probation that the person may not operate a motor vehicle unless:

(i) operation is authorized by the person's probation officer; or

(ii) a motor vehicle operated by the person is equipped with an ignition interlock device.

History: (1) thru (3)En. Sec. 33, Ch. 267, L. 1947; amd. Sec. 1, Ch. 126, L. 1957; amd. Sec. 1, Ch. 161, L. 1961; amd. Sec. 1, Ch. 339, L. 1969; amd. Sec. 4, Ch. 430, L. 1977; Sec. 31-149, R.C.M. 1947; (4)En. Sec. 29, Ch. 267, L. 1947; amd. Sec. 1, Ch. 165, L. 1957; amd. Sec. 1, Ch. 27, L. 1961; amd. Sec. 1, Ch. 386, L. 1973; amd. Sec. 3, Ch. 430, L. 1977; Sec. 31-145, R.C.M. 1947; R.C.M. 1947, 31-145(d), 31-149; amd. Sec. 57, Ch. 421, L. 1979; amd. Sec. 2, Ch. 698, L. 1983; amd. Sec. 1, Ch. 314, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 25, Ch. 443, L. 1987; amd. Sec. 3, Ch. 612, L. 1987; amd. Sec. 13, Ch. 378, L. 1989; amd. Sec. 1, Ch. 476, L. 1989; amd. Sec. 2, Ch. 563, L. 1991; amd. Sec. 20, Ch. 195, L. 1993; amd. Sec. 5, Ch. 107, L. 1997; amd. Sec. 2, Ch. 258, L. 1999; amd. Sec. 15, Ch. 309, L. 1999; amd. Sec. 1, Ch. 455, L. 1999; amd. Sec. 8, Ch. 207, L. 2001; amd. Sec. 2, Ch. 300, L. 2003; amd. Sec. 2, Ch. 329, L. 2003; amd. Secs. 5, 15(8), Ch. 556, L. 2003; amd. Sec. 1, Ch. 547, L. 2005; amd. Sec. 116, Ch. 596, L. 2005.

61-5-209. Surrender and return of license upon suspension or revocation. When the department suspends or revokes a license, it shall require that the license be surrendered to and be retained by the department except that at the end of the period of suspension, the surrendered license must be returned to the licensee.

History: En. Sec. 34, Ch. 267, L. 1947; R.C.M. 1947, 31-150; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 26, Ch. 443, L. 1987; amd. Sec. 21, Ch. 195, L. 1993.

61-5-210. No operation under foreign license during suspension or revocation in this state. A resident or nonresident whose license or right or privilege to operate a motor vehicle or commercial motor vehicle in this state has been suspended or revoked as provided in

this chapter may not operate a motor vehicle or commercial motor vehicle in this state under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during the suspension or after the revocation until a new license is obtained under this chapter.

History: En. Sec. 35, Ch. 267, L. 1947; R.C.M. 1947, 31-151; amd. Sec. 27, Ch. 443, L. 1987; amd. Sec. 22, Ch. 195, L. 1993.

61-5-211. Right of appeal to court. A person denied a driver's license or whose license has been canceled, suspended, or revoked by the department except when the cancellation or revocation is mandatory under the provisions of this chapter may file a petition within 30 days after the denial, cancellation, suspension, or revocation for a hearing in the matter in the district court in the county in which the person resides. The court has jurisdiction and it shall set the matter for hearing upon 30 days' written notice to the department, and shall take testimony and examine the facts of the case and determine whether the petitioner is entitled to a driver's license or is subject to suspension, cancellation, or revocation of the license under the provisions of this chapter.

History: En. Sec. 36, Ch. 267, L. 1947; R.C.M. 1947, 31-152; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 28, Ch. 443, L. 1987; amd. Sec. 23, Ch. 195, L. 1993.

61-5-212. Driving while license suspended or revoked — penalty — second offense of driving without valid license or licensing exemption — seizure of vehicle or rendering vehicle inoperable. (1) (a) A person commits the offense of driving a motor vehicle without a valid license or without statutory exemption or during a suspension or revocation period if the person drives:

(i) a motor vehicle on any public highway of this state at a time when the person's privilege to drive or apply for and be issued a driver's license is suspended or revoked in this state or any other state;

(ii) a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled in this state or any other state or the person is disqualified from operating a commercial motor vehicle or from obtaining a commercial driver's license; or

(iii) a motor vehicle on any public highway of this state without possessing a valid driver's license, as provided in 61-5-102, or without proof of a statutory exemption, as provided in 61-5-104.

(b) (i) Except as provided in subsection (1)(b)(ii), a person convicted of the offense of driving a motor vehicle without a valid driver's license or without proof of a statutory exemption for the second time or driving during a suspension or revocation period shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than \$500.

(ii) If the reason for the suspension or revocation was that the person was convicted of a violation of 61-8-401 or 61-8-406 or a similar offense under the laws of any other state or the suspension was under 61-8-402 or 61-8-409 or a similar law of any other state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, the person shall be punished by imprisonment for a term of not less than 2 days or more than 6 months or a fine not to exceed \$2,000, or both, and in addition, the court may order the person to perform up to 40 hours of community service.

(2) (a) Upon receiving a record of the conviction of any person under this section upon a charge of driving a noncommercial vehicle while the person's driver's license, privilege to drive, or privilege to apply for and be issued a driver's license was suspended or revoked, the department shall extend the period of suspension or revocation for an additional 1-year period.

(b) Upon receiving a record of the conviction of any person under this section upon a charge of driving a commercial motor vehicle while the person's commercial driver's license was revoked, suspended, or canceled or the person was disqualified from operating a commercial motor vehicle under federal regulations, the department shall suspend the person's commercial driver's license in accordance with 61-8-802.

(3) The vehicle owned and operated at the time of an offense under this section by a person whose driver's license is suspended for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409, or 61-8-410 must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the convicted person's county of residence for a period of 30 days.

(4) The sentencing court shall order the action provided for under subsection (3) and shall specify the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered inoperable by the sheriff within 10 days after the conviction.

(5) A convicted person is responsible for all costs associated with actions taken under subsection (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a joint owner who is determined to be without fault.

(6) A court may not suspend or defer imposition of penalties provided by this section.

History: En. Sec. 39, Ch. 267, L. 1947; amd. Sec. 1, Ch. 84, L. 1959; R.C.M. 1947, 31-155; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 29, Ch. 443, L. 1987; amd. Sec. 1, Ch. 30, L. 1989; amd. Sec. 24, Ch. 195, L. 1993; amd. Sec. 5, Ch. 447, L. 1995; amd. Sec. 1, Ch. 88, L. 1997; amd. Sec. 12, Ch. 428, L. 2003; amd. Sec. 6, Ch. 556, L. 2003; amd. Sec. 1, Ch. 583, L. 2005; amd. Sec. 3, Ch. 83, L. 2007; amd. Sec. 2, Ch. 462, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 83 in (1)(a)(i) substituted “privilege to drive or apply for and be issued a driver’s license” for “privilege to do so”; in (1)(a)(ii) at end substituted “or from obtaining a commercial driver’s license” for “under federal regulations”; in (2)(a) inserted “or privilege to apply for and be issued a driver’s license”; and made minor changes in style. Amendment effective March 30, 2007.

Chapter 462 in (1)(a) inserted “without a valid license or without statutory exemption”; inserted (1)(a)(iii) regarding driving vehicle on highway without possessing valid driver’s license or exemption; in (1)(b)(i) inserted “without a valid driver’s license or without proof of a statutory exemption for the second time or driving”; and made minor changes in style. Amendment effective October 1, 2007.

61-5-213. Conviction defined. For the purposes of parts 1 through 3 of this chapter, part 8 of chapter 8, chapter 11, and as it relates to any state or local law regulating the operation of a motor vehicle on highways or mandating the revocation or suspension of a driver’s license or driving privilege, the term “conviction” means:

- (1) a plea of guilty or nolo contendere accepted by the court;
- (2) an adjudication of guilt that has not been vacated by the appropriate court;
- (3) a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal;
- (4) a forfeiture of bail or collateral deposited to secure the person’s appearance in court that has not been vacated;
- (5) the payment of a fine or court cost, regardless of whether it is suspended or rebated; or
- (6) the violation of a condition of release without bail, regardless of whether the condition is imposed as part of probation.

History: En. Sec. 29, Ch. 267, L. 1947; amd. Sec. 1, Ch. 165, L. 1957; amd. Sec. 1, Ch. 27, L. 1961; amd. Sec. 1, Ch. 386, L. 1973; amd. Sec. 3, Ch. 430, L. 1977; R.C.M. 1947, 31-145(c); amd. Sec. 1, Ch. 369, L. 1991; amd. Sec. 25, Ch. 428, L. 2005.

61-5-214. Mandatory suspension for failure to appear or pay fine — administrative fee — notice. (1) The department shall suspend the driver’s license or driving privilege of a person upon receipt of a report from the court, certified under penalty of law and in a form prescribed by the department, that the person:

- (a) is charged with or convicted of a violation of chapters 3 through 10 of this title or fails to comply with a sentence imposed pursuant to 46-18-201;
- (b) (i) failed to post the set bond amount or appear upon an issued complaint, summons, or court order;
- (ii) after posting a driver’s license in lieu of bail, failed to appear upon an issued complaint, summons, or court order; or
- (iii) when assessed a fine, costs, or restitution of \$100 or more, failed to pay the fine, costs, or restitution; and
- (c) received prior written notice that the driver’s license or driving privileges of the person would be suspended upon:
 - (i) failure to post bond or appear on an issued complaint, summons, or court order;
 - (ii) failure to appear after posting a driver’s license in lieu of bond; or
 - (iii) failure to pay assessed fines, costs, or restitution.
- (2) The suspension continues in effect until the court notifies the department that:
 - (a) the person has either appeared in court or paid the assessed fines, costs, or restitution; and

(b) the person has paid the court an administrative fee of \$25 if the court was holding the offender's driver's license in lieu of bail under 44-1-1102, 46-9-302, or 46-9-401.

(3) The notice required under this section may be included on the summons or complaint and notice to appear form given to the person when charges are initially filed or may be contained in a court order, either hand-delivered to the person while in court or sent by first-class mail, postage prepaid, to the most current address for that person received by or on record with the court. The initial notice must be followed by a written warning from the court, sent by first-class mail, advising the person that a license suspension is imminent and of the probable consequences of a suspension unless the person appears or pays within a specified number of days.

(4) The court shall deposit any administrative fee received under subsection (2)(b) in the appropriate county or city general fund.

History: En. Sec. 1, Ch. 442, L. 1987; amd. Sec. 68, Ch. 83, L. 1989; amd. Sec. 1, Ch. 263, L. 1989; amd. Sec. 1, Ch. 441, L. 1995; amd. Sec. 2, Ch. 437, L. 2003; amd. Sec. 5, Ch. 465, L. 2003.

61-5-215. Provisional licenses prohibited. A provisional, restricted, or probationary license may not be issued upon a suspension under 61-5-214.

History: En. Sec. 2, Ch. 442, L. 1987; amd. Sec. 2, Ch. 133, L. 2003; amd. Sec. 6, Ch. 465, L. 2003.

61-5-216. Reinstatement of license. Upon receipt of notification from the court that the operator has appeared, posted the bond, or paid the fine, costs, or restitution amounts and has paid the administrative fee required under 61-5-214 and, if the reinstatement fee required under 61-2-107 or 61-5-218 has been paid, the department shall reinstate the license, unless the operator otherwise is not entitled to reinstatement.

History: En. Sec. 3, Ch. 442, L. 1987; amd. Sec. 69, Ch. 83, L. 1989; amd. Sec. 3, Ch. 133, L. 2003; amd. Secs. 7, 8, Ch. 465, L. 2003.

61-5-217. Suspending privileges of persons under age eighteen. The privilege of driving a motor vehicle on the highways of this state given to a person under the age of 18 is subject to suspension or revocation by the department in like manner and for like causes as an adult.

History: En. Sec. 2, Ch. 484, L. 1987.

61-5-218. License reinstatement fee following license suspension or revocation.

(1) Except as provided in subsection (2), a person whose driver's license, other than a commercial driver's license, or driving privilege has been suspended or revoked shall pay a reinstatement fee of \$100 to the department to have the driver's license or driving privilege reinstated.

(2) A person whose driver's license or driving privilege was suspended or revoked under 61-5-205 or 61-8-402 shall pay a reinstatement fee as required by 61-2-107. A driver's license or driving privilege that was suspended or revoked under 61-5-207 must be reinstated without payment of a reinstatement fee.

(3) The department shall deposit the fees collected under subsection (1) in the general fund.

History: En. Sec. 1, Ch. 133, L. 2003.

61-5-219. Discount on license reinstatement fee — completion of driver rehabilitation program. (1) A person who submits a certificate of completion from a department-approved driver rehabilitation program must receive a 50% reduction on the license reinstatement fee due under 61-2-107 or 61-5-218.

(2) For purposes of this section, a driver rehabilitation program may be approved by the department if the program provider annually certifies to the department that the provider's program:

(a) provides a participant with a minimum of 4 hours of instruction on Montana driving laws, the importance of positive driving attitudes and habits, defensive driving techniques, and the responsible use of drugs and alcohol;

(b) includes preinstruction and postinstruction testing of each participant;

(c) provides a certificate of completion to each person who successfully completes the program; and

(d) reports to the department, in a timely manner, the name, date of birth, and driver's license number of each person to whom the provider has issued a certificate of completion.

History: En. Sec. 14, Ch. 556, L. 2003.

61-5-220. Limitations on issuance of hazardous materials endorsement to commercial driver's license — security threat assessment. (1) The department may not issue, transfer, or renew a hazardous materials endorsement for a person who holds a commercial driver's license unless it receives notice from the transportation security administration of the department of homeland security that:

(a) the person does not pose a security threat warranting denial of a hazardous materials endorsement;

(b) the person has been granted a waiver from the transportation security administration; or

(c) less than 4 years have elapsed since a favorable security threat assessment was performed in a former licensing jurisdiction.

(2) In addition to any requirements under this chapter and in accordance with the security threat assessment standards provided in 49 CFR, part 1572, an applicant who is seeking a hazardous materials endorsement shall:

(a) complete a separate application as prescribed by the transportation security administration;

(b) submit, as directed by the department, to a fingerprint-based background check by the transportation security administration; and

(c) pay to the agent of the transportation security administration the fees imposed under 49 CFR, part 1572, for collection and transmission of fingerprints and applicant information, processing of fingerprint identification records, and the security threat assessment and adjudication.

History: En. Sec. 1, Ch. 428, L. 2005.

61-5-221. Authority to revoke or remove hazardous materials endorsement. (1) If the transportation security administration of the department of homeland security informs the department that a person does not meet the standards for the security threat assessment provided in 49 CFR, part 1572, the department shall revoke the person's hazardous materials endorsement to a commercial driver's license. Revocation of the hazardous materials endorsement results in immediate withdrawal of the person's authority to transport hazardous materials, as defined in 61-8-801, in commerce, but does not otherwise affect the person's commercial driver's license or any unrelated endorsements.

(2) A person whose hazardous materials endorsement has been revoked or removed under this section shall surrender the person's commercial driver's license to the department and apply for a replacement license, as provided in 61-5-114, that does not include the hazardous materials endorsement.

(3) Upon surrender of a hazardous materials endorsement by a person who is disqualified from holding a hazardous materials endorsement under 49 CFR, part 1572, the department shall note the removal of the hazardous materials endorsement on its records and on the commercial driver's license information system.

History: En. Sec. 2, Ch. 428, L. 2005; amd. Sec. 37, Ch. 428, L. 2005.

Part 3 Miscellaneous Provisions

61-5-301. Indication on driver's license of intent to make anatomical gift or of living will declaration. (1) The department of justice shall provide on each driver's license spaces for indicating when the licensee has:

(a) executed a document under 72-17-201 of intent to make a gift of all or part of the driver's body under the Uniform Anatomical Gift Act; or

(b) executed a declaration under 50-9-103 relating to the use of life-sustaining treatment.

(2) The department shall provide each applicant, at the time of application for a new driver's license or for a renewal, printed information calling the applicant's attention to the provisions of this section. Each applicant must be asked orally if the applicant wishes to make an anatomical gift and if the applicant has executed the declaration under 50-9-103 relating to the use of life-sustaining treatment.

(3) Each applicant must be given an opportunity to indicate in the spaces provided under subsection (1) the applicant's intent to make an anatomical gift or that the applicant has executed the declaration under 50-9-103 relating to the use of life-sustaining treatment.

(4) The department shall issue to each applicant who indicates an intent to make an anatomical gift a statement that, when signed by the licensee in the manner prescribed in 72-17-201, constitutes a document of anatomical gift. This statement must be printed on a sticker that the donor may attach permanently to the back of the donor's driver's license.

(5) The department shall electronically transfer the information of all persons who volunteer, upon application for a driver's license or an identification card, to donate organs or tissue to the organ and tissue donation registry created in 72-17-105 and 72-17-106 and any subsequent changes to the applicant's donor status.

History: En. 31-135.1 by Sec. 1, Ch. 28, L. 1977; R.C.M. 1947, 31-135.1; amd. Sec. 2, Ch. 459, L. 1985; amd. Sec. 1, Ch. 204, L. 1987; amd. Sec. 30, Ch. 443, L. 1987; amd. Sec. 2, Ch. 540, L. 1989; amd. Sec. 3, Ch. 230, L. 2003; amd. Sec. 1, Ch. 296, L. 2005.

61-5-302. Unlawful use of license or identification card. It is a misdemeanor for a person to:

(1) display or cause or permit to be displayed or have in the person's possession a canceled, revoked, suspended, fictitious, or altered driver's license, identification card, or tribal identification card;

(2) lend the person's driver's license, identification card, or tribal identification card to any other person or knowingly permit its use by another;

(3) display or represent as one's own any driver's license, identification card, or tribal identification card not issued to the person;

(4) fail or refuse to surrender to the department upon its lawful demand a driver's license or identification card that has been suspended, revoked, or canceled;

(5) use a false or fictitious name in an application for a driver's license or identification card or knowingly make a false statement or knowingly conceal a material fact or otherwise commit a fraud in an application; or

(6) permit any unlawful use of a driver's license, identification card, or tribal identification card issued to the person.

History: En. Sec. 37, Ch. 267, L. 1947; amd. Sec. 1, Ch. 70, L. 1961; R.C.M. 1947, 31-153; amd. Sec. 58, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 31, Ch. 443, L. 1987; amd. Sec. 2, Ch. 471, L. 1991; amd. Sec. 25, Ch. 195, L. 1993; amd. Sec. 11, Ch. 180, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 180 in (1), (2), (3), and (6) inserted "or tribal identification card"; and made minor changes in style. Amendment effective October 1, 2007.

61-5-303. Making false affidavit — penalty. Any person who makes any false affidavit or knowingly swears or affirms falsely to any matter or thing required by the terms of parts 1 through 3 of this chapter to be sworn to or affirmed is guilty of false swearing and upon conviction shall be punishable as provided by 45-7-202.

History: En. Sec. 38, Ch. 267, L. 1947; R.C.M. 1947, 31-154; amd. Sec. 59, Ch. 421, L. 1979.

61-5-304. Permitting unauthorized minor to drive. No person shall cause or knowingly permit his child or ward under the age of 18 years to drive a motor vehicle upon any highway when such minor is not authorized hereunder or in violation of any of the provisions of parts 1 through 3 of this chapter.

History: En. Sec. 40, Ch. 267, L. 1947; R.C.M. 1947, 31-156.

61-5-305. Employing driver without license. No person shall employ as a commercial vehicle operator any person not then licensed as provided by this chapter.

History: En. Sec. 41, Ch. 267, L. 1947; R.C.M. 1947, 31-157; amd. Sec. 32, Ch. 443, L. 1987.

61-5-306. Renting motor vehicle to another. (1) A person may not rent a motor vehicle to any other person unless the latter person is licensed under this chapter or, in the case of a nonresident, licensed under the laws of the state or country of the person's residence except a nonresident whose home state or country does not require that an operator be licensed.

(2) A person may not rent a motor vehicle to another until the person has inspected the driver's license of the proposed renter and compared and verified the signature on the license with the signature of the proposed renter written in the person's presence.

(3) A person may not rent a commercial motor vehicle to another until the person has inspected the driver's license of the proposed renter and determined that the proposed renter has a commercial driver's license.

(4) Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle rented, the name and address of the person to whom the vehicle is rented, and the number and expiration date of the license of the renter. The record is open to inspection by any police officer or officer or employee of the department.

History: En. Sec. 42, Ch. 267, L. 1947; R.C.M. 1947, 31-158; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 33, Ch. 443, L. 1987; amd. Sec. 26, Ch. 195, L. 1993.

61-5-307. Penalty for misdemeanor. (1) It is a misdemeanor for any person to violate any of the provisions of parts 1 through 3 of this chapter and 61-11-101 unless such violation is by this chapter or other law of this state declared to be a felony.

(2) Unless another penalty is in this chapter or by the laws of this state provided, every person convicted of a misdemeanor for the violation of any provision of parts 1 through 3 of this chapter and 61-11-101 shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months or by both such fine and imprisonment.

History: En. Sec. 43, Ch. 267, L. 1947; R.C.M. 1947, 31-159.

61-5-308. Uniformity of interpretation. Parts 1 through 3 of this chapter and 61-11-101 and 61-11-102 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact them.

History: En. Sec. 44, Ch. 267, L. 1947; R.C.M. 1947, 31-160.

61-5-309. Unlawful issuance of license or identification card. No person may create, publish, or otherwise manufacture a Montana driver's license or a Montana identification card authorized by 61-12-501 or color facsimile thereof or create, manufacture, or possess an engraved plate or other such device for the printing of a Montana driver's license or Montana identification card authorized by 61-12-501 or color facsimile thereof, except as authorized by the department.

History: En. Sec. 1, Ch. 248, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

Part 4 Driver License Compact

61-5-401. Driver License Compact. This part shall be known and may be cited as the "Driver License Compact".

Article I. Findings and Declaration of Policy

(1) The party states find that:

(a) the safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles;

(b) violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property;

(c) the continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles in whichever jurisdiction the vehicle is operated.

(2) It is the policy of each of the party states to:

(a) promote compliance with the laws, ordinances, and administrative rules relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles;

(b) make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the overall compliance with motor vehicle laws, ordinances, and administrative rules as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

Article II. Definitions

As used in this compact:

(1) "state" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico;

(2) "home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle;

(3) "conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance, or administrative rule, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

Article III. Reports of Conviction

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code, or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered or the conviction was a result of the forfeiture of bail, bond, or other security; and include any special findings made in connection therewith.

Article IV. Effect of Conviction

(1) The licensing authority in the home state, for the purposes of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

(a) manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(b) driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(c) any felony in the commission of which a motor vehicle is used;

(d) failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(2) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

(3) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (1) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (1) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature, and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

Article V. Applications for New Licenses

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) the applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated;

(2) the applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of 1 year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) the applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

Article VI. Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance or to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a nonparty state.

Article VII. Compact Administrator and Interchange of Information

(1) The head of the licensing authority of each party state shall be the administrator of this compact for his state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(2) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

Article VIII. Entry Into Force and Withdrawal

(1) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 6 months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

Article IX. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 154, L. 1963; R.C.M. 1947, 31-163.

61-5-402. Department as licensing authority — information and documents to be furnished. As used in the compact, the term “licensing authority” with reference to this state shall mean the department of justice. The department shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of Articles III, IV, and V of the compact.

History: En. Sec. 2, Ch. 154, L. 1963; R.C.M. 1947, 31-164; amd. Sec. 1, Ch. 503, L. 1985.

61-5-403. Reimbursement of compact administrator. The compact administrator provided for in Article VII of the compact shall not be entitled to any additional compensation on account of his service as such administrator but shall be entitled to expenses incurred in connection with his duties and responsibilities as such administrator in the same manner as for expenses incurred in connection with any other duties or responsibilities of his office or employment.

History: En. Sec. 3, Ch. 154, L. 1963; R.C.M. 1947, 31-165.

61-5-404. Governor as executive head. As used in the compact, with reference to this state, the term “executive head” shall mean the governor.

History: En. Sec. 4, Ch. 154, L. 1963; R.C.M. 1947, 31-166.

61-5-405. Offenses furnishing ground for suspension or revocation of license — return to licensing jurisdiction of abstracts of court records and reports of conviction. (1) Items enumerated in Article IV(1), subsections (a), (b), (c), and (d) of 61-5-401

refer specifically to 45-5-103, 45-5-104, 61-8-401, the definition of felony as provided in 45-2-101, and 61-7-103, respectively.

(2) In addition to convictions mentioned in subsection (1), the department, for the purpose of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if the conduct had occurred in this state for:

(a) convictions of perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (61-5-303); and

(b) three convictions of reckless driving committed within a period of 12 months (61-8-301).

(3) Court abstracts or reports of conviction received by the department that name an individual licensed in another jurisdiction must be forwarded to the jurisdiction of licensure. The department may not take action against the driver's license or driving privilege of the individual as may be required elsewhere in this title.

History: En. Sec. 6, Ch. 154, L. 1963; R.C.M. 1947, 31-168; amd. Sec. 98, Ch. 421, L. 1979; amd. Sec. 8, Ch. 485, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 4, Ch. 419, L. 1991; amd. Sec. 16, Ch. 354, L. 1995.

61-5-406. Review of administrative actions. Any act or omission of any official or employee of this state done or omitted pursuant to, or in enforcing, the provisions of the Driver License Compact shall be subject to review pursuant to the provisions of 61-5-211, but any review of the validity of any conviction reported pursuant to the compact shall be limited to establishing the identity of the person so convicted.

History: En. Sec. 8, Ch. 154, L. 1963; R.C.M. 1947, 31-169.

CHAPTER 8 TRAFFIC REGULATION

Part 3 Vehicle Operating Requirements

61-8-310. When local authorities may and shall alter limits. (1) If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under 61-8-303 and 61-8-309 through 61-8-313 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit that:

(a) decreases the limit at an intersection;

(b) increases the limit within an urban district, but not to more than 65 miles an hour during the nighttime;

(c) decreases the limit outside an urban district, but not to less than 35 miles an hour; or

(d) decreases the limit in an area near a school, a senior citizen center, as defined in 23-5-112, or a designated crosswalk that is close to a school or a senior citizen center to not less than 80%, rounded down to the nearest whole number evenly divisible by 5, of the limit that would be set on the basis of an engineering and traffic investigation, but not less than 15 miles an hour. If warranted by an engineering and traffic investigation, a local authority may adopt variable speed limits to adapt to traffic conditions by time of day, provided that the variable limits comply with the provisions of 61-8-206.

(2) A board of county commissioners may set limits, as provided in subsection (1)(c), without an engineering and traffic investigation on a county road.

(3) A local authority in its jurisdiction may determine the proper speed for all arterial streets and shall set a reasonable and safe limit on arterial streets that may be greater or less than the speed permitted under 61-8-303 for an urban district.

(4) An altered limit established as authorized under this section is effective at all times or at other times determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.

(5) Except as provided in subsection (1)(d), the commission has exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions of federal-aid highways in all municipalities or urban areas. The commission shall set these limits in accordance with 61-8-309.

History: En. Sec. 43, Ch. 263, L. 1955; amd. Sec. 1, Ch. 89, L. 1971; amd. Sec. 57, Ch. 316, L. 1974; R.C.M. 1947, 32-2146; amd. Sec. 2, Ch. 614, L. 1985; amd. Sec. 1, Ch. 686, L. 1991; amd. Sec. 1, Ch. 213, L. 1993; amd. Sec. 3, Ch. 287, L. 1995; amd. Sec. 5, Ch. 43, L. 1999; amd. Sec. 198, Ch. 542, L. 2005.

61-8-349. Certain vehicles to stop at all railroad grade crossings. (1) (a) Except as provided in subsection (1)(b), the driver of a motor vehicle carrying seven or more passengers for hire, a school bus with or without passengers, or a vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop the vehicle as close as practicable but not less than 15 feet from the nearest rail of the railroad and while stopped shall open the door (in the case of a school bus) and shall listen and look in both directions along the track for an approaching train and for signals indicating the approach of a train and may not proceed until the driver can do so safely. After stopping as required in this section and upon proceeding when it is safe to do so, the operator of a vehicle may cross only in a gear of the vehicle that requires no changing gears while traversing the crossing. The operator may not shift gears while crossing the track or tracks.

(b) A stop is not required at a crossing where a police officer, highway patrol officer, or official traffic control device directs traffic to proceed.

(2) As used in this section, "official traffic control device" does not include a railroad grade crossing signal.

History: (1)En. Sec. 1, Ch. 151, L. 1919; re-en. Sec. 3842, R.C.M. 1921; re-en. Sec. 3842, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1957; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-164, R.C.M. 1947; (2) thru (4)Ap p. Sec. 90, Ch. 263, L. 1955; amd. Sec. 1, Ch. 244, L. 1977; Sec. 32-2193, R.C.M. 1947; Ap. p. Sec. 284, Ch. 5, L. 1971; Sec. 75-7007, R.C.M. 1947; R.C.M. 1947, 32-2193, 72-164(part), 75-7007(part); amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1, Ch. 449, L. 1991; amd. Sec. 31, Ch. 352, L. 2003.

61-8-351. Meeting or passing school bus — vehicle operator liability for violation — penalty. (1) Upon overtaking from either direction a school bus that has stopped on the highway or street to receive or discharge school children, a driver of a motor vehicle:

(a) shall stop the motor vehicle not less than approximately 15 feet before reaching the school bus when there is in operation on the bus a visual flashing red signal as specified in 61-9-402; and

(b) may not proceed until the children have entered the school bus or have alighted and reached the side of the highway or street and until the school bus ceases operation of its visual flashing red signal.

(2) The driver of a motor vehicle shall slow to a rate of speed that is reasonable under the conditions existing at the point of operation and must be prepared to stop when meeting or overtaking from either direction a school bus that is preparing to stop on the highway or street to receive or discharge school children as indicated by flashing amber lights as specified in 61-9-402.

(3) Each bus used for the transportation of school children must bear upon the front and rear plainly visible signs containing the words "SCHOOL BUS" in letters not less than 8 inches in height and, in addition, must be equipped with visual signals meeting the requirements of 61-9-402. Amber flashing lights must be actuated by the driver approximately 150 feet in cities and approximately 500 feet in other areas before the bus is stopped to receive or discharge school children on the highway or street. Red lights must be actuated by the driver of the school bus whenever but only whenever the school bus is stopped on the highway or street whether inside or outside the corporate limits of any city or town to receive or discharge school children. However, a school district board of trustees may, in its discretion, adopt a policy prohibiting the operation of amber or red lights when a school bus is stopped at the school site to receive or discharge school children and the receipt or discharge does not involve street crossing by the children. The lights may not be operated in violation of that policy.

(4) The requirements that a driver of a motor vehicle shall stop when a school bus receives or discharges school children under subsection (1) and the requirements that amber and red lights must be actuated by a school bus driver under subsection (3) do not apply when a school bus receives or discharges school children in a designated school bus pullout on a state highway. A designated school bus pullout must meet the following requirements:

(a) The pullout must be located on a roadway separated by a physical barrier, such as a guardrail, raised median, drainage ditch, or irrigation ditch.

CHAPTER 9 VEHICLE EQUIPMENT

Part 4 Miscellaneous Regulations

61-9-402. Audible and visual signals on police, emergency vehicles, and on-scene command vehicles — immunity. (1) A police vehicle must be equipped with a siren capable of giving an audible signal and may be equipped with alternately flashing or rotating red or blue lights as specified in this section.

(2) An authorized emergency vehicle must be equipped:

(a) with a siren and an alternately flashing or rotating red light as specified in this section; and

(b) with signal lamps mounted as high and as widely spaced laterally as practicable that are capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight.

(3) A bus used for the transportation of school children must be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front two red and two amber alternating flashing lights and to the rear two red and two amber alternating flashing lights. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. The warning lights must be as prescribed by the board of public education and approved by the department.

(4) A police vehicle and an authorized emergency vehicle may, and an emergency service vehicle must, be equipped with alternately flashing or rotating amber lights as specified in this section.

(5) The use of signal equipment as described in this section imposes upon the operators of other vehicles the obligation to yield right-of-way or to stop and to proceed past the signal or light as provided in 61-8-346 and subject to the provisions of 61-8-209 and 61-8-303.

(6) An employee, agent, or representative of the state or a political subdivision of the state or of a governmental fire agency organized under Title 7, chapter 33, who is operating a police vehicle, an authorized emergency vehicle, or an emergency service vehicle and using signal equipment in rendering assistance at a highway crash scene or in response to any other hazard on the roadway that presents an immediate hazard or an emergency or life-threatening situation is not liable, except for willful misconduct, bad faith, or gross negligence, for injuries, costs, damages, expenses, or other liabilities resulting from a motorist operating a vehicle in violation of subsection (5).

(7) Blue, red, and amber lights required in this section must be mounted as high as and as widely spaced laterally as practicable and be capable of displaying to the front two alternately flashing lights of the specified color located at the same level and to the rear two alternately flashing lights of the specified color located at the same level or one rotating light of the specified color, mounted as high as is practicable and visible from both the front and the rear. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. Except as provided in 61-9-204(6), only police vehicles, as defined in 61-8-102, may display blue lights, lenses, or globes.

(8) A police vehicle and authorized emergency vehicle may be equipped with a flashing signal lamp that is green in color, visible from 360 degrees, and attached to the exterior roof of the vehicle for purposes of designation as the on-scene command and control vehicle in an emergency or disaster. The green light must have sufficient intensity to be visible at 500 feet in normal sunlight. Only the on-scene command and control vehicle may display green lights, lenses, or globes.

(9) Only a police vehicle or an authorized emergency vehicle may be equipped with the means to flash or alternate its headlamps or its backup lights.

(10) A violation of subsection (5) is considered reckless endangerment of a highway worker, as provided in 61-8-301(4), and is punishable as provided in 61-8-715.

History: En. Sec. 129, Ch. 263, L. 1955; amd. Sec. 1, Ch. 40, L. 1959; amd. Sec. 1, Ch. 250, L. 1965; amd. Sec. 4, Ch. 153, L. 1975; R.C.M. 1947, 32-21-132; amd. Sec. 1, Ch. 361, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 116, Ch. 370, L. 1987; amd. Sec. 27, Ch. 431, L. 1997; amd. Sec. 5, Ch. 520, L. 1999; amd. Sec. 46, Ch. 352, L. 2003; amd. Sec. 5, Ch. 379, L. 2003; amd. Sec. 218, Ch. 542, L. 2005; amd. Sec. 43, Ch. 449, L. 2007; amd. Sec. 2, Ch. 520, L. 2007.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 449 in (6) near beginning after “state or of a” substituted “governmental fire agency organized under Title 7, chapter 33” for “fire department”; and made minor changes in style. Amendment effective June 1, 2007.

Chapter 520 in (5) near middle after “signal or light” substituted “as provided in 61-8-346 and” for “only with caution and at a speed that is no greater than is reasonable and proper under the conditions existing at the point of operation”. Amendment effective October 1, 2007.

Part 5 Enforcement — Penalties

61-9-502. Semiannual inspection of school buses. (1) The department shall perform the semiannual inspection of school buses, one of which shall be at least 30 days prior to the beginning of the school term, and reinspect the buses, if necessary, before the beginning of the school term.

(2) The department's inspection shall determine if the school buses meet the minimum standards for school buses as adopted by the board of public education.

History: En. 32-21-155.1 by Sec. 2, Ch. 179, L. 1969; amd. Sec. 1, Ch. 141, L. 1973; R.C.M. 1947, 32-21-155.1; amd. Sec. 1, Ch. 503, L. 1985.

TITLE 69 PUBLIC UTILITIES AND CARRIERS

CHAPTER 3 REGULATION OF UTILITIES

Part 8 Montana Telecommunications Act

69-3-846. Discounts for schools, libraries, and health care providers. The commission is authorized to establish intrastate discounts to schools, libraries, and health care providers and to perform administrative functions necessary as a condition of federal universal service support if the discounts are recovered through the federal universal service fund.

History: En. Sec. 16, Ch. 349, L. 1997.

TITLE 80 AGRICULTURE

CHAPTER 8 PESTICIDES

Part 4 Model School Integrated Pest and Pesticide Management Safety Program

80-8-401. Short title. This part may be cited as the “Model School Integrated Pest and Pesticide Management Safety Program Act”.

History: En. Sec. 1, Ch. 177, L. 1993.

80-8-402. Statement of policy. The legislature finds and declares that:

- (1) the exposure of children to pesticides applied in and around schools can pose a potentially acute or chronic toxicological hazard to their health;
- (2) infants and children can be especially vulnerable to pesticides, especially if pesticides are not properly applied or used;
- (3) schools need to adopt pest management programs that minimize exposure of school children to pesticides and provide for alternative pest control methods; and
- (4) the department shall prepare and distribute to each Montana school district a model integrated pest and pesticide management safety program that satisfies the provisions of this section.

History: En. Sec. 2, Ch. 177, L. 1993.

80-8-403. Definitions. As used in this part, the following definitions apply:

- (1) "Department" means the department of agriculture as provided for in 2-15-3001.
- (2) "Director" means the director of agriculture as provided for in 2-15-3001.
- (3) "School district" means a school district established according to Title 20, chapter 6.

History: En. Sec. 3, Ch. 177, L. 1993.

80-8-404. Model school integrated pest and pesticide management safety program. (1) The department shall develop a model school integrated pest and pesticide management safety program and distribute the program to school districts by July 1, 1994. The model program must provide guidance and recommendations to school districts on management of pests and pesticides and on alternatives within schools and on school grounds.

(2) The model program guidelines and recommendations must include information on pests, alternative and pesticide control methods and their integration, environmental concerns, and protection of public health. Special information and recommendations for protecting school children from exposure to pesticides and the acute or chronic potential adverse health effects of pesticides must be emphasized. The department may periodically revise the model program guidelines, policies, and recommendations as new integrated pest, pesticide, or alternative management techniques and methods are developed and as new information on protecting school children from pesticides is developed.

(3) The director may consult and obtain advice from pest and pesticide specialists, school personnel, and the public on any aspect of the model school integrated pest and pesticide management safety program.

History: En. Sec. 4, Ch. 177, L. 1993.

80-8-405. Policymaking authority. The department may adopt policies and guidelines to implement this part.

History: En. Sec. 5, Ch. 177, L. 1993.

TITLE 87

FISH AND WILDLIFE

CHAPTER 1

ORGANIZATION AND OPERATION

Part 2

Department of Fish, Wildlife, and Parks

87-1-226. Disposition of meat of animals damaging property. (1) The meat of all animals killed or destroyed pursuant to 87-1-225 by the department or the authorized landholder shall be conserved and given to state institutions, school lunch programs, the

department of public health and human services, or charitable institutions. The department shall provide transportation and distribution of the meat.

(2) Any meat not accepted by state institutions, school lunch programs, the department of public health and human services, or charitable institutions shall be sold as provided in 87-1-511.

History: En. Sec. 2, Ch. 60, L. 1957; amd. Sec. 22, Ch. 511, L. 1973; R.C.M. 1947, 26-136; amd. Sec. 1, Ch. 120, L. 1985; amd. Sec. 559, Ch. 546, L. 1995.

Part 6

Finance

87-1-603. Payments to counties for department-owned land — exceptions. Before November 30 of each year, the treasurer of each county in which the department owns any land shall describe the land, state the number of acres in each parcel, and request the drawing of a warrant to the county in a sum equal to the amount of taxes which would be payable on county assessment of the property were it taxable to a private citizen. The director shall approve or disapprove the request. The director may disapprove a request only if the director finds it to be inconsistent with this section. If the director disapproves a request, the director shall return it with an explanation detailing the reasons for the disapproval to the appropriate county treasurer for correction. If the director approves a request, the director shall transmit it to the department of administration, which shall draw a warrant payable to the county in the amount shown on the request and shall send the warrant to the county treasurer. The warrant is payable out of any funds to the credit of the department of fish, wildlife, and parks. A payment may not be made to a county in which the department owns less than 100 acres. A payment may not be made to a county for lands owned by the department for game or bird farms or for fish hatchery purposes or lands acquired and managed for the purposes of Title 23, chapter 1.

History: En. Sec. 1, Ch. 1, L. 1951; amd. Sec. 1, Ch. 188, L. 1953; amd. Sec. 21, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-133; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 486, L. 1987; amd. Sec. 34, Ch. 325, L. 1995.

87-1-604. Authorization for allocation of funds to school districts. The county commissioners of any county receiving funds as provided in 87-1-603 may allocate, in such amounts as they determine, any portion of the funds to any school district in the county whenever the school district contains any department lands. Any balance remaining after allocations have been made to school districts shall be credited to the general fund of the county.

History: En. Sec. 2, Ch. 1, L. 1951; amd. Sec. 3, Ch. 9, L. 1977; R.C.M. 1947, 26-134.

GENERAL INDEX

References are to Montana Codes Annotated Title, Chapter, and Part numbers

You may access the entire Montana Code Annotated on-line at:
<http://www.opi.mt.gov/masterMCASearch.html>

You may access the Montana Administrative Rules on-line at:
<http://arm.sos.mt.gov/>

A

ABANDONMENT OF DISTRICTS, 20-3-205, 20-3-312, 20-6-209, 20-6-307, 20-9-604

ACCREDITATION OF SCHOOLS, 20-7-102

Failure to maintain, 20-9-344
Instructional programs set forth in, 20-7-111
Lack of, effect, 20-9-311
Libraries, requirements, 20-7-202
Out-of-district attendance agreements, effect, 20-5-321
Standards, 20-2-121, 20-3-106, 20-6-503, 20-7-101

ADMINISTRATIVE PROCEDURE

Contested cases Montana Administrative Procedure Act, 2-4-102 — 2-4-711

appeal of, 2-4-711

decisions

final, 2-4-621, 2-4-623
hearing examiner, effect of unavailability, 2-4-622
judicial review, 2-4-702, 2-4-704
modification, 2-4-621, 2-4-703, 2-4-711
notification, 2-4-623
proposal for, 2-4-621
reversal, 2-4-704, 2-4-711
staying, 2-4-702, 2-4-711

discovery, 2-4-602

evidence, 2-4-604, 2-4-611, 2-4-612, 2-4-614, 2-4-623

ex parte consultations, 2-4-604, 2-4-613

hearing examiners, 2-4-611

decision, participation in or unavailability for, 2-4-621, 2-4-622

informal proceedings, 2-4-604

record of decisions and data, 2-4-614

hearings, 2-4-611, 2-4-612

informal proceedings, 2-4-603, 2-4-604

notice requirements, 2-4-601, 2-4-613, 2-4-702

informal proceedings, 2-4-603, 2-4-604

judicial notice, 2-4-612

judicial review, 2-4-702; Const., VII, 4

evidence, additional, 2-4-703

immediate, 2-4-701

petition, 2-4-603, 2-4-604, 2-4-702

service of process, 2-4-106

standards of review, 2-4-704

licensing provisions, applicability, 2-4-603, 2-4-631

notice requirements, 2-4-601, 2-4-613, 2-4-623, 2-4-702

record and transcription, 2-4-604, 2-4-614, 2-4-702, 2-4-704

waiver of proceedings when, 2-4-603

Counsel, representation by, 2-4-105

Definitions, 2-4-102

Evidence, production, 2-4-104

Licenses and licensing, 2-4-102, 2-4-603, 2-4-631

Parties to proceedings, 2-4-102, 2-4-104, 2-4-105, 2-4-506, See also Contested cases

becoming party, effect on public participation provisions, 2-3-112

witness fees and mileage, payment, 2-4-104

ADMINISTRATIVE PROCEDURE (Continued)

- Public employees, collective bargaining — applicability, 39-31-105
- Public participation in government
 - compliance with notice provisions, 2-3-104
 - electronic mail, dissemination/receipt of comment, 2-3-301
- School districts
 - hearings concerning withholding of equalization or BASE aid, 20-9-344
- Service of process, 2-4-106
- Statements of policy, public availability, 2-4-103
- Subpoenas, issuance and enforcement, 2-4-104, 2-4-611
- Witnesses for, 2-4-104

ADMISSION TO SCHOOLS, 20-5-101; Const., X, 7

- Immunization requirements, 20-5-403, 20-5-404

ADULT EDUCATION

- Budget, 20-7-705, 20-7-713
- Definitions, 20-7-701
- Fund, adult basic education, 20-7-712
- Fund, adult education, 20-7-704, 20-7-705, 20-7-713
- Levy for, 20-7-705
- Literacy programs, 20-7-714
- Policies, 20-7-703, 20-7-711
- Programs, establishment, 20-7-702
- Tuition and fees, 20-7-704

ADULT LITERACY PROGRAM, 20-7-714**AGE REQUIREMENTS**

- Admittance, for, 20-1-101, 20-5-101
- Adult education and adult basic education, 20-7-701
- Compulsory attendance and enrollment, 20-5-102, 20-5-103
- Deaf and Blind, Montana School for the, 20-8-104, 20-8-106
- Disabilities, child with
 - “eligible child” defined, 20-7-436
- Five-year-old schooling, 20-7-117
- Immunization requirements, 20-5-403, 20-5-404
- Kindergarten, 20-7-117
- Literacy programs, county funding requirement, 20-7-714
- Preschool programs, 20-7-117
- “Pupil” defined, 20-1-101
- Special education, 20-7-411, 20-7-436, 20-7-443
- State superintendent, 20-3-101
- Traffic education course, eligibility, 20-7-503
- Transportation
 - bus drivers, 20-10-103
 - eligible transportees, 20-10-101

ALTERNATIVE EDUCATION SITE, 41-5-1801**ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS**

- Definitions, 37-48-102
- Private, 37-48-101 — 37-48-118

ANNEXATION OF DISTRICTS

- Bonded indebtedness, 20-6-411
- Conditions for, 20-6-421
- Definitions, 20-6-422
- Hiring preference for employees, 20-6-410
- Procedures, 20-6-205
- Tenure protection, 20-6-410
- Tuition debt, assumption, 20-6-413

ARBITRATION, COLLECTIVE BARGAINING AGREEMENTS, 39-31-306**ARCHITECTURAL SERVICES AND ARCHITECTS, 18-2-113, 18-2-114, 20-6-631, 20-6-633, 20-6-636**

ASSESSMENT

- Funding, 20-9-543
- Gifted and Talented, 20-7-902
- Placement, 20-5-110
- Rules 20-2-121
- Student, 20-1-101, 20-3-106, 20-3-324

ATHLETIC TRAINERS, 2-15-1771, 37-36-101 — 37-36-205**ATTENDANCE**

- Absences, notice to parents when, 44-2-507
- Administration of provisions, 20-3-324
- Aggregate hours, 20-1-301
- Average number belonging (ANB), calculation, 20-9-311, See also AVERAGE NUMBER BELONGING (ANB)
- Boundaries, See DISTRICTS AND TRUSTEES, Boundaries, generally; Elementary districts; High school districts
- Compulsory, 20-4-402, 20-5-103, 20-5-105, 20-5-106, 20-5-108
- Enforcement, 20-5-105, 20-5-106
- Enrollment, See ENROLLMENT
- Excuses, 20-5-102, 20-5-103
- Home schools, 20-5-109, 20-5-111
- Immunization requirements, Title 20, chapter 5, part 4, See IMMUNIZATION REQUIREMENTS
- Incapacitated children, 20-5-107
- Indian children, 20-5-108
- Indigent children, 20-5-107
- Nonpublic schools, records, 20-5-109
- Nonresidents, See TUITION
- Out-of-district attendance agreements, 20-5-314, 20-5-320 — 20-5-324, See also SPECIAL EDUCATION; TUITION
- Reciprocal attendance agreements, 20-5-314
- Religious instruction released time programs, effect, 20-1-308
- Reports, 20-4-301, 20-4-402, 20-9-311
- Special education, See SPECIAL EDUCATION
- Transportation contract payments, use of records, 20-10-125
- Truancy, 20-4-302, 20-5-106
- Tuition, See SPECIAL EDUCATION; TUITION
- Violation, 20-5-106

ATTENDANCE AGREEMENTS, 20-5-320 — 20-5-324**ATTENDANCE OFFICERS, 20-3-206, 20-5-104 — 20-5-107****AUDIOLOGICAL SERVICES, 20-7-403, 26-1-806****AUDIOLOGIST, 37-15-101, 37-15-301****AUDITS**

- County superintendent of schools, travel expenses, 20-3-203
- Local government entities, audits and financial review
 - accounting methods, 2-7-504, 2-7-509, 2-7-513
 - citation of state of Montana single audit act, 2-7-502
 - definitions, 2-7-501
 - examination of books and papers, 2-7-508
 - exit review conference, 2-7-512
 - fees, 2-7-516
 - deposit, 2-7-518
 - filing, 2-7-514
 - nonpayment or late payment, 2-7-517
 - special audit, 2-7-503
 - withholding when, 2-7-522
 - financial reports, 2-7-501, 2-7-503, 2-7-513, 2-7-514
 - general provisions, 2-7-503
 - independent auditor, 2-7-501, 2-7-506, 2-7-511
 - compensation, 2-7-516
 - compliance with provisions, 2-7-522

AUDITS (Continued)

Local government entities, audits and financial review (Continued)

independent auditor (Continued)

examination powers, 2-7-508, 2-7-511

exit review conference, 2-7-512

officers and employees of entity, assistance by, 2-7-507

reports, 2-7-513, 2-7-514

summary of significant findings, preparation, 2-7-521

officers and employees

accounts of officer, examination, 2-7-511

assistance by, 2-7-507

suspension of officer when, 2-7-511

violations or nonperformance of duty, 2-7-515

penalty, 2-7-517

publication, 2-7-521

purpose, 2-7-502

reports, 2-7-511, 2-7-513 — 2-7-515, 2-7-517, 2-7-521, 2-7-522

school districts or associated cooperatives, 2-7-503, 2-7-513, 2-7-514, 2-7-515, 20-9-213

school-related organizations, 2-7-509

scope, 2-7-505

special audit, 2-7-503

standards, 2-7-505

School districts or associated cooperatives, 2-7-503, 2-7-513, 2-7-514, 2-7-515, 20-9-213

School finance, 20-3-205, 20-9-203, 20-9-213, 20-10-202

School-related organizations, 2-7-509

Yearly audit, when required, 2-7-503

AVERAGE NUMBER BELONGING (ANB), 20-1-101, 20-3-324, 20-9-311, 20-9-314

Basic entitlement, 20-9-306, 20-9-314, 20-9-326

Calculation, 20-1-101, 20-6-702, 20-9-311

Elementary schools with ANB of 9 or fewer pupils, 20-9-303

Equivalent ANB, 20-9-311

Five-year-old schooling, calculation for, 20-7-117, 20-9-311, 20-9-313

General fund per-ANB budget, 20-9-308

Guaranteed tax base aid provisions, 20-9-366 — 20-9-369, See FINANCE, Guaranteed tax base aid

Increases, 20-3-106, 20-3-205, 20-9-313, 20-9-314, 20-9-407

Isolated school classification, 20-9-302, 20-9-303

Joint districts, 20-9-305, 20-9-501, 20-10-144

K-12 districts, 20-6-702

Kindergartens, calculation for, 20-7-117, 20-9-311, 20-9-313

Opening or reopening schools, 20-3-205, 20-6-502, 20-6-507, 20-9-313

Retirement fund levy, proration, 20-9-501

School facility entitlement, 20-9-370, 20-9-371

Special education, 20-9-321

Total per-ANB entitlements, 20-6-702, 20-9-306, 20-9-314, 20-9-326, 20-9-366 — 20-9-368

Transfer, requests for, 20-3-205

Transportation fund budget, county revenue requirement proration, 20-10-144

B**BASE FUNDING PROGRAM**

See also FINANCE

BASE aid, 20-9-306

deficiency, funding, 20-9-351

distribution and administration, 20-2-121, 20-3-106, 20-9-344, 20-9-346, 20-9-347

state equalization aid, 20-9-343

BASE budget, 20-9-141, 20-9-303, 20-9-306, 20-9-308, See also BUDGETS AND BUDGET SYSTEM

guaranteed tax base aid, 20-9-366 — 20-9-369

levy, 20-3-324, 20-6-702, 20-9-104, 20-9-141, 20-9-306, 20-9-308

BASE FUNDING PROGRAM (Continued)

BASE budget (Continued)

- over-BASE budget amount or levy, 20-3-324, 20-9-104, 20-9-141, 20-9-306, 20-9-308, 20-9-353
- over-BASE budget, exception, 20-9-308

BASE funding program, 20-9-306, 20-9-307, 20-9-347

- average number belonging (ANB) used to establish, 20-9-314
- budget amendments, aid for, 20-9-166
- elementary districts, county equalization, 20-9-331, See County equalization aid
- elementary schools with ANB of 9 or fewer pupils, 20-9-141, 20-9-303
- high school districts, county equalization, 20-9-333, See County equalization aid
- joint districts, 20-9-305
- junior high schools, proration of amount when, 20-6-506
- K-12 districts, 20-6-702
- nonaccredited schools, 20-9-311
- opening or reopening schools, 20-6-502 — 20-6-504, 20-6-507
- out-of-district attendance agreements, reimbursements, 20-5-324
- state equalization aid, 20-9-343, 20-9-348

Basic entitlement, 20-9-306, 20-9-311, 20-9-314, 20-9-326, 20-9-367, 20-9-368

BASIC SYSTEM OF FREE QUALITY PUBLIC SCHOOLS

Definition, 20-9-309

BOARD OF PUBLIC EDUCATION

Appointments to and composition, 2-15-1507, 2-15-1508; Const., X, 9

Certification Standards and Practices Advisory Council, 2-15-1522, 20-4-109, 20-4-131 — 20-4-133

Chairman, 20-2-111

Cooperatives, full service education - contracts, approval policy, 20-7-454

Deaf and Blind, Montana School for the - duties, Title 20, chapter 8, part 1, See DEAF AND BLIND, MONTANA SCHOOL FOR THE

Defined, 20-1-101

Education, State Board of - composition, 20-2-101; Const., X, 9

Expenses of members, 20-2-113

Gifted and talented children programs, policies, 20-2-121, 20-7-903, 20-7-904

Interstate Agreement on Qualification of Educational Personnel, contract approval, 20-4-122

Library of visual, aural, and other educational media — selections for, 20-2-121

Meetings, 20-2-112

Oath of office, 2-15-1508

Powers and duties, 20-2-121; Const., X, 9

Quorum, 20-2-111

Records, 20-2-114

Recreation programs, authority, 20-7-804

Reports required by, 20-9-344

Rules, 20-2-114, 20-2-121, 20-7-101

School districts and trustees

- financial reports by trustees, 20-9-213
- policies of board, enforcement, 20-3-323, 20-3-324
- rules with fiscal impact, 20-7-101

School elections ordered by, 20-20-201

School finance

- BASE aid - administration, distribution, or withholding, 20-2-121, 20-9-344, 20-9-346
- county equalization aid responsibilities, 20-9-344

Schools generally

- accreditation, 20-2-121, 20-3-106, 20-7-101, 20-7-102, 20-7-111, 20-7-202
- food services, reports, 20-10-201
- instructional programs specified by, 20-7-111
- library information reports requested by, 20-7-205
- pupil instruction on Saturday, policies for, 20-1-303, 20-2-121
- pupil-instruction-related days, policies for, 20-1-304, 20-2-121

School transportation, duties, 20-2-121, 20-10-103, 20-10-104, 20-10-111

- bus standards, 20-2-121, 20-10-111

Seal, 20-2-114

Secondary education, equivalency of completion, 20-2-121, 20-7-131

BOARD OF PUBLIC EDUCATION (Continued)

- Secretary, 20-2-111, 20-2-112, 20-2-122
- Special education policies and standards, 20-2-121, 20-7-402, 20-7-403, 20-7-414, 20-7-431
- Student assessment, 20-2-121
- Superintendent of public instruction
 - accreditation standards, recommendation, 20-3-106, 20-7-101
 - duties prescribed by, 20-3-106
 - fiscal notes, submission, 20-7-101
 - liaison, 20-2-111
- Teachers or specialists
 - appeals by, 20-2-121, 20-4-110
 - certificate fees, 20-4-109
 - certification policies, 20-2-121, 20-4-102, 20-4-103, 20-4-106, 20-4-110, 20-7-403
 - education programs, approval, 20-4-131
 - emergency authorization of employment, 20-2-121, 20-4-111
- Teachers' Retirement System, membership, 19-20-302, See **TEACHERS' RETIREMENT SYSTEM**
- Term of office and vacancies, 2-15-1508

BONDS AND BOND ISSUES

- Affidavit, 20-9-423
- Amortization bond, 20-9-408
- Amount, limitations, 7-7-107, 20-9-406, 20-9-471
- Applicable provisions, 20-6-101, 20-9-401
- Bid requirements, 20-9-430, 20-9-432
- Building fund, 20-9-435, 20-9-508
- Building reserve, issue made for purpose of, 20-9-502
- Challenge to local government bond elections, 7-7-105
- City-county consolidated units, limitation on amount, 7-7-107
- Consolidation, See **Municipal finance consolidation**
- Conflict of laws, 20-9-401
- County high school bonds
 - definition of county high school, 20-6-101
 - election, See **Elections for bond issues**
 - purposes, 20-9-435
 - unification of schools, effect, 20-6-313
- Debt service fund, See **FINANCE**, Debt service fund
- Districts and trustees, authority, 20-3-324, 20-6-101
 - bond payment funds, liability, 20-9-444 — 20-9-446
 - judgments, to pay, 2-9-316
 - official bonds, sureties on, 2-9-507
 - petitions, receipt and consideration, 20-9-424, 20-9-425
- Elections for bond issues
 - absentee ballots available, 20-9-426, 20-20-204, 20-20-401
 - authorization, 20-9-421
 - ballots, preparation and form, 20-9-426
 - canvassing of votes, 20-9-428
 - determination of approval or rejection, 20-9-428
 - industrial facility agreements, approval for issues in excess of maximum, 20-9-407
 - introduction, methods, 20-9-421
 - local government elections, challenges to, 7-7-105, 7-7-106
 - notice, requirements and form, 20-9-427
 - petition for, 20-9-421 — 20-9-425
 - resolution for, 20-9-421, 20-9-422
 - state advance for school facilities, 20-9-422
 - school district property, loans for replacement, 20-6-640
- Endowment fund money invested in, 20-9-604
- Execution, 20-9-433
- Forms, 20-9-408, 20-9-433
- Impact aid reserve bonds, 20-9-472
- Industrial facility agreements, 20-9-407

BONDS AND BOND ISSUES (Continued)

Interest and principal

- accrued interest, refund or deduction, 20-9-411
- amortization bonds, 20-9-408
- fund for, See FINANCE, Debt service fund
- industrial facilities, paid by - when, 20-9-407
- obligations, on, 20-9-471
- payments
 - budget for, 20-9-438
 - county high school unification, effect, 20-6-313
 - entries and notification, 20-9-442
 - made when, 20-9-440
 - state treasurer, to - when, 20-9-440
 - tax levy for, 20-9-401, 20-9-439
- serial bonds, 20-9-408
- termination of interest, when, 20-9-440

Interstate school agreements, joint, 20-9-705

Issuance

- applicable provisions, 20-9-401
- authorization, 20-9-421, 20-9-428
- date, 20-9-411
- form, 20-9-433
- limitations, 20-9-406
- obligations, 20-9-471
- purpose, 20-9-403
- refunding bonds, 20-9-412
- term, limitation and commencement, 20-9-410
- trustees, by, 20-3-324

Joint facility, 7-11-104, 20-9-404, 20-9-405

Judgment liability, payment, 2-9-316

Liability, 20-9-437, 20-9-444 — 20-9-446

Local government

- elections, challenges to, 7-7-105, 7-7-106

Marketability, provisions to improve, 20-9-464, 20-9-465

Maximum amount, 20-9-406, 20-9-407

Notes, sale in anticipation of federal or state revenue, 7-7-109

Obligations, issuance, 20-9-471

Official bonds, See PUBLIC OFFICERS OR EMPLOYEES

Outstanding, 20-9-406, 20-9-441

Payment

- amortization bonds, 20-9-408
- date for, 20-9-411
- fund for, liability, 20-9-444 — 20-9-446, See also FINANCE, Debt service fund
- industrial facilities, by - when, 20-9-407
- obligations, 20-9-471
- refunding bonds, 20-9-406
- serial bonds, 20-9-408
- tax levy for, 20-9-439

Preservation, copies for, 20-9-434

Proceedings

- transcripts, 20-9-436

Purchaser, delivery to, 20-9-435

Purposes, 2-9-316, 20-9-403, 20-9-435

Redemption, 20-9-401, 20-9-441

- advance refunding bonds, 20-9-412
- applicable provisions, 20-9-401
- county high school unification, effect, 20-6-313
- funding for, 20-9-403, 20-9-508
- issuance, 20-3-324, 20-9-412
- payment, 20-9-406
- repurchase agreements, 7-6-213
- sale, 20-9-412

BONDS AND BOND ISSUES (Continued)

- Redemption (Continued)
 - term, limitation and commencement, 20-9-410
 - trustees, by, 20-3-324
- Registration, 20-9-434
- Resolution to issue bonds, 20-9-429
- Restrain, action to time limitation, 7-7-105, 20-9-465
- Retirement and interest, 20-9-121, 20-9-438
- Sale, 20-9-401
 - bids, 20-9-412, 20-9-430, 20-9-432
 - high school districts, money from - use restricted, 20-9-403
 - investments from, interest, 20-9-213
 - money, disposition, 20-9-435, 20-9-508
 - negotiation and preparation, 20-9-432
 - notice, 20-9-430, 20-9-431
 - obligations, 20-9-471
 - purchaser, delivery to, 20-9-435
 - trustees, by, 20-3-324
- School districts, authority and liability, 20-9-401, 20-9-402, 20-9-437
- Self-insurance reserve fund, to fund, 2-9-211
- Serial bonds, 20-9-408
- Surety bonds, See SURETY BONDS
- Tax protests lost, for repayment, 20-9-403, 20-9-406
- Tort claims, payment of judgment liability, 2-9-316
- Validity, 20-9-411, 20-9-464

BREASTFEEDING IN WORKPLACE, 39-2-215 — 39-2-217**BUDGETS AND BUDGET SYSTEM**

- Administrative rules with financial impact, 20-7-101
- Adult basic education fund, 20-7-112
- Adult education fund, 20-7-705, 20-7-713
- Applicability of provisions, 20-9-101
- Appropriations, See APPROPRIATIONS
- BASE budget, 20-9-141, 20-9-303, 20-9-306, 20-9-308
 - guaranteed tax base aid, 20-9-366 - 20-9-369
 - levy, 20-3-324, 20-6-702, 20-9-104, 20-9-141, 20-9-306, 20-9-308
 - over-BASE budget amount or levy, 20-3-324, 20-9-104, 20-9-141, 20-9-306
 - 20-9-308, 20-9-353
- Budget amendments, 20-3-106, 20-9-161 — 20-9-168
 - budgeted funds, transfer among appropriated items, 20-9-208
 - direct state aid for, 20-3-106
 - emergency tax levy to finance, 20-9-168
 - filing, 20-3-205
 - final budget, 20-9-208
 - lapse of appropriations, 20-9-209
 - state aid, 20-9-166
 - transportation fund budget, 20-9-165, 20-9-166, 20-10-143
- “Budgeted fund” defined, 20-9-201, See FINANCE, Funds generally
- Building reserve fund, 20-9-502, 20-9-503
- Bus depreciation reserve fund, 20-10-147
- Claims, unpaid - effect, 20-9-209
- Cooperatives, full service education, 20-7-451
- County superintendent of schools, general duties, 20-3-205
- Debt service fund, 20-9-133, 20-9-438
 - state and county equalization aid entitlement, basis, 20-9-346
- Expenditures, See FINANCE, Expenditures
- Failure to submit, 20-9-344
- Final budgets
 - adjustment procedures, 20-9-132
 - adoption, 20-9-131, 20-9-133
 - adult education fund, inclusion, 20-7-705
 - appropriations, See APPROPRIATIONS

BUDGETS AND BUDGET SYSTEM (Continued)

Final budgets (Continued)

- budget amendments, 20-9-165, 20-9-208
- budgeted funds, See FINANCE, Funds generally
- building reserve fund, 20-9-503
- completion, 20-3-205, 20-3-209, 20-9-134
- debt service fund, 20-9-133, 20-9-438, 20-9-439
- deficit spending, 20-9-133
- expenditures, See FINANCE, Expenditures
- filing, 20-3-205, 20-9-134, 20-9-344
- interlocal cooperative fund, transfers to - applicability, 20-9-703
- joint districts, 20-9-151, 20-9-152
- lease requirements, provision for, 20-6-625
- levy to finance, 20-9-142
- meetings, 20-3-205, 20-9-115, 20-9-131
- nonoperating fund, 20-9-506
- retirement fund budget, 20-9-501

Form of budget, 20-3-106, 20-9-103

General fund budget, 20-9-308

- additional funding and levy, 20-3-324, 20-6-603, 20-9-104, 20-9-353
- BASE aid, 20-9-306, See FINANCE, BASE aid
- BASE budget, 20-9-306, See BASE budget
- controversy appeal costs paid from, 20-3-210
- estimation of revenues, 20-3-205, 20-9-348
- guaranteed tax base aid, 20-9-367, 20-9-368
- insurance coverage, costs - inclusion, 20-3-331, 20-6-608
- junior high school, ANB applied to prorate amount when, 20-6-506
- K-12 districts, 20-6-703
- maximum, 20-6-603, 20-9-141, 20-9-163, 20-9-306, 20-9-308, 20-9-353
- over-BASE budget levy, 20-3-324, 20-9-104, 20-9-141, 20-9-306, 20-9-308, 20-9-353
- property insurance, cost of coverage - inclusion, 20-6-608
- state and county equalization aid entitlement, basis, 20-9-346
- tuition, unanticipated receipts - credit to, 20-5-324

General fund per-ANB budget, 20-9-308

Guaranteed tax base aid, 20-9-369

Interlocal cooperative agreement expenditures, 20-9-704

Joint districts, 20-9-151

Junior high school operated by elementary and high school districts, 20-6-506

K-12 districts, 20-6-702

“Nonbudgeted fund” defined, 20-9-201, See FINANCE, Funds generally

Nonoperating fund budget, 20-9-506

Obligations, issuance, 20-9-471

Opening or reopening schools, 20-6-502 - 20-6-504, 20-6-507

Property tax increase, vote required on over-BASE budget, 20-9-353

Property tax revenue increase, 15-10-203

Public employees’ retirement, state’s costs, 19-3-317

Retirement fund budget, 20-9-501

- guaranteed tax base aid, 20-9-367, 20-9-368, 20-9-501
- K-12 districts, 20-6-702
- state and county equalization aid entitlement, basis, 20-9-346

Rules with financial impact, 20-7-101

Special education, 20-7-435, 20-7-443, 20-9-303, 20-9-501

State Board of Education, budget requests, 2-15-1511

Statutes with financial impact, 1-2-113

Supervision, 20-3-106, 20-9-102

Traffic education fund, nonapplicability of budget laws, 20-7-507

Transportation fund budget, 20-10-143

- budget amendments, 20-9-165, 20-9-166, 20-10-143
- contingency amounts, 20-10-124, 20-10-143
- emergency, 20-10-124
- levy requirements, 20-10-144, 20-10-146

BUDGETS AND BUDGET SYSTEM (Continued)

- Transportation fund budget (Continued)
 - reimbursement, 20-10-141, 20-10-142, 20-10-145, 20-10-146
 - revenues for, computation, 20-10-144, 20-10-146
- Trustees' duties generally, 20-3-324
- Vocational technical education, secondary, 20-7-305, 20-7-306

BUILDING FUND, See FINANCE**BUILDING RESERVE FUND, See FINANCE****BUSES, See TRANSPORTATION****C****CARETAKER RELATIVE**

- Definitions, 40-6-501, 40-6-601
- Enrollment by, 40-6-601
- Medical authorization affidavit, 40-6-502
- Medical care, 40-6-501

CERTIFICATION

- Certificates, 20-4-101
 - class 1 professional, 20-4-106
 - class 2 standard, 20-4-106, 20-4-107
 - class 3 administrative and supervisory, 20-4-106
 - class 4 vocational, recreational, or adult education, 20-4-106
 - class 5 provisional, 20-4-106
 - classification, 20-4-106
 - endorsements, 20-4-106, 20-4-111
 - fees, 20-4-109
 - issuance, 20-4-103, 20-4-106
 - letter of reprimand, 20-4-110
 - outstanding, validity, 20-4-107
 - registration, 20-3-205, 20-4-202
 - renewal, 20-4-102, 20-4-107, 20-4-108
 - reprimand, revocation, suspension, or denial, 2-4-631, 20-2-121, 20-4-102, 20-4-110, 20-4-111
 - 20-4-114, 20-4-133
 - term and period of validity, 20-4-108
- Certification, 20-4-101, See also Certificates
 - county superintendent of schools, qualifications, 20-3-201
 - emergency authorization of employment, 20-4-111
 - policies, 20-2-121, 20-3-106, 20-4-102, 20-4-106
 - special education, 20-7-403
 - standards, 20-4-133
- Certification Standards and Practices Advisory Council, 2-15-1522, 20-4-109, 20-4-131 — 20-4-133

CHILD ABUSE AND NEGLECT

- Definitions, 41-3-102
- Foster care, 41-3-115
- Guardianship of youth in need of care, petitions for, 41-3-422, 41-3-444
- Interview of child, participation of school employee, 41-3-202
- Policy of state, 41-3-101
- Public health and human services, Department of - powers and duties, 52-1-103
- Records, disclosure to school employees, 41-3-205
- Reporting of, 41-3-201 — 41-3-208

CHILD LABOR, Child Labor Standards Act, 41-2-102 — 41-2-118**CIGARETTES AND OTHER TOBACCO PRODUCTS, see also SMOKING IN PUBLIC PLACES**

- Penalties for possession, 45-5-637
- Possession or consumption by person under 18 years of age a crime, 45-5-637
- Use in public school building or on property prohibited, 20-1-220

COLLECTIVE BARGAINING

- Administrative Procedure Act, applicability, 39-31-105
- Agreement, 39-31-306
 - disputes, See Disputes
 - duty to bargain collectively and in good faith, 39-31-305
 - preexisting, effect on, 39-31-109
- Appeals, 39-31-105
- Appropriate bargaining unit, 39-31-103, 39-31-202
- Arbitration, 39-31-306, 39-31-310, 39-31-311
- Coercion of employees, 39-31-201, 39-31-401, 39-31-402
- Confidentiality of negotiations, 39-31-302
- Contempt, failure to produce evidence or testify, 39-31-106
- Definitions, 39-31-103
- Discrimination prohibited
 - complaints, filing, 49-2-501
 - employer, in hiring, 39-31-401
 - labor organization, by, 39-31-205
- Disputes, 39-31-306 — 39-31-311
- Dues, 39-31-203
 - political contributions, use for prohibited, 39-31-402
 - religious exception, 39-31-204
- Duties to bargain collectively and in good faith, 39-31-305, 39-31-401, 39-31-402
- Elections, 39-31-206, 39-31-208 — 39-31-210
- Evidence
 - good faith, failure to negotiate in, 39-31-305
 - production, 39-31-106
 - rules of evidence inapplicable, 39-31-207, 39-31-406
 - unfair labor practices, 39-31-406, 39-31-409
- Exclusive representative, 39-31-103
 - certification or recognition, 39-31-206 — 39-31-208, 39-31-211, 39-31-308
 - discrimination by, prohibited, 39-31-205
 - dues, certification, 39-31-203
 - election, See Elections
 - fact-finding proceedings, party to, 39-31-308, 39-31-309
 - good faith duty, 39-31-305, 39-31-402
 - petition for, 39-31-207
 - rights and safeguards to be guaranteed, 39-31-206
 - unaffiliated, to be, 39-31-211
 - unfair labor practices by, 39-31-402
- Fees and assessments in lieu of dues, 39-31-204, 39-31-401
- Group insurance, See PUBLIC OFFICERS OR EMPLOYEES, Group benefits
- Hearings
 - administrative procedure act, applicability, 39-31-105
 - agreement, disputes, 39-31-309
 - notice of, 39-31-107
 - representation
 - consent election, waiver for, 39-31-209
 - disputes concerning rights and safeguards, 39-31-206
 - petition for, 39-31-207
 - telephone or videoconference, 39-31-105
 - unfair labor practices, 39-31-404 — 39-31-406, 39-31-409
- Hours subject to, 39-4-107, 39-31-305
- Interference with right to bargain collectively, 39-31-201, 39-31-401
- Investigatory authority, 39-31-106, 39-31-207, 39-31-405
- Items subject to, 39-31-304, 39-31-305
- Labor organizations, 39-31-103, See also Exclusive representative
 - nonassociation with, right of, 39-31-204
 - right of self-organization, 39-31-201
 - unfair labor practices, 39-31-402
- Legislature
 - authority not limited, 39-31-102
 - state employees' agreement, submission to, 39-31-305

COLLECTIVE BARGAINING (Continued)

- Mailing list provision, nonapplicability, 2-6-109
- Management rights, 39-31-303
- Mediation, 39-31-307, 39-31-309
- Notices
 - hearings, 39-31-107
 - unfair labor practices, 39-31-404, 39-31-405, 39-31-408
- Oaths, administration, 39-31-106
- Open meeting provisions, applicability, 2-3-203
- Policy of state, 39-31-101
- Prisoners, collective bargaining agreements may not prohibit labor by, 39-31-312
- Public employer, 39-31-103
 - good faith duty, 39-31-305, 39-31-401
 - management rights, 39-31-303
 - representation
 - bargaining, 39-31-301, 39-31-402
 - legal, 39-31-108
 - student observer, 39-31-302
 - unfair labor practices by, 39-31-401
- Religious convictions against, 39-31-204
- Representation
 - board of personnel appeals, 39-31-108
 - public employees, 39-31-201, See Exclusive representative
 - public employer, 39-31-108, 39-31-301, 39-31-402
- Restraint of right of organization, 39-31-201, 39-31-401, 39-31-402
- Rules, 39-31-104, 39-31-207 — 39-31-209, 39-31-401
- School districts, 39-31-304 — 39-31-306
- Self-organization, employees' right, 39-31-201
- Service of process, 39-31-107, 39-31-405
- Student observers, 39-31-302
- Subpoenas, 39-31-106, 39-31-107, 39-31-309
- Unfair labor practices, 39-31-103
 - amendment of complaint, 39-31-407
 - complaint, 39-31-404 — 39-31-407
 - court enforcement, 39-31-409
 - hearing, 39-31-404 — 39-31-406
 - investigation, 39-31-405
 - labor organization, of, 39-31-402
 - modification of findings or order, 39-31-408, 39-31-409
 - notice, 39-31-404 — 39-31-406, 39-31-408
 - order, 39-31-406, 39-31-408, 39-31-409
 - public employer, of, 39-31-401
 - remedies, 39-31-403
- Wages subject to, 39-31-305
- Witnesses, 39-31-106, 39-31-401

COMMEMORATIVE DAYS, 20-1-306**CONCEALED WEAPONS**

- Carrying in prohibited place, 45-8-328, 45-8-351, 45-8-361
- School Building, 45-8-361
- Suspension and expulsion, 20-5-202

CONSOLIDATION OF DISTRICTS

See also ANNEXATION OF DISTRICTS

- Elementary districts
 - bonded indebtedness, 20-6-411, 20-6-414, 20-6-423
 - cash disposition following, 20-6-414
 - hiring preference for employees, 20-6-410
 - interim governance, 20-6-424
 - procedures, 20-6-423
 - tenure protection, 20-6-410
 - tuition debt, assumption, 20-6-413

CONSOLIDATION OF DISTRICTS (Continued)

- High school districts, 20-6-314, 20-6-423
 - cash disposition following, 20-6-414
 - interim governance, 20-6-424
 - order for, 20-6-423
 - procedures, 20-6-410, 20-6-423
 - tuition debt, assumption, 20-6-413
 - two or more counties, districts in, 20-6-423

CONTRACTS

- Awarding
 - districts, 20-9-204
 - impartiality, 18-1-111
 - lowest bidder, to - when, 18-1-102
 - notice, 7-1-2121
 - state construction contracts, 18-1-110, 18-2-103-114, 18-2-409
- Bids and bidding
 - advertisement, 18-1-202, 18-2-301
 - conflict of interest, 20-9-204
 - construction of buildings, 18-2-103, 18-2-403, 18-2-409
 - exceptions, 20-9-204
 - lowest bidder, award to, 18-1-102, 18-2-103
 - nonresidents, 18-1-101, 18-1-102, 18-1-111
 - prevailing wage rate, inclusion, 18-2-422
 - “residence” defined, 18-1-103
 - resident bidder, 18-1-101, 18-1-102
 - security
 - advertisement specifications, 18-1-202
 - compliance, 18-1-206
 - forfeiture, 18-1-204
 - form, 18-1-203
 - requirement, 18-1-201
 - return, 18-1-205
- Breach, 20-6-636
- Conflict of interest, 2-2-201 — 2-2-203, 20-9-204
- Construction of buildings
 - advertising required, 18-2-301
 - architects, 18-2-113, 18-2-114, 18-2-122, 20-6-633
 - authorization, 18-2-102
 - bids and bidding, 18-2-103
 - preference to Montana labor, 18-2-403, 18-2-409
 - contractors, See Bonding requirements for contractors; Contractors
 - contracts, 18-2-103
 - approval and amount withheld, 18-2-404
 - discrimination, 18-2-403, 49-3-207
 - federal funds, involving, 18-2-313, 18-2-403
 - preference to Montana labor, 18-2-403, 18-2-409
 - definitions, 18-2-101, 18-2-401
 - delays, 18-2-312
 - engineers, consulting, 18-2-103
 - engineers or land surveyors, 18-2-121, 18-2-122
 - federal funding, 18-2-101, 18-2-102
 - contracts involving, 18-2-313, 18-2-403
 - injunction, 18-2-432
 - inspection, 18-2-103
 - nonconstruction services classification, exemption, 18-2-401
 - supervision, 18-2-103, 18-2-121
 - violations and penalty, 18-2-432
- Contractors
 - bids, See Bids and bidding
 - bonding requirements, See Bonding requirements for contractors; Surety bonds
 - delays in construction, 18-2-312

CONTRACTS (Continued)**Contractors (Continued)**

- discrimination, 18-2-403, 49-3-207
- injunction to restrain, 18-2-432
- notice of acceptance and completion date of projects, 18-2-421
- payroll records, 18-2-423, 18-2-424, See also Wages paid by contractors
- penalties, 18-2-432
- residence, 18-1-103, 18-1-106
- subcontractors, 18-2-202, 18-2-204 — 18-2-206, 18-2-208, 18-2-407, 18-2-424
- subpoena, 18-2-424
- violations, 18-2-432, 20-6-624
- wages paid by, See Wages paid by contractors

Definitions, 18-1-101

- construction of building provisions, 18-2-101, 18-2-103, 18-2-401
- public authority or obligee, 18-1-201
- residence, 18-1-103

Educational personnel, qualification — interstate agreements, 20-4-121 — 20-4-123**Federal funds, contracts involving**

- construction of buildings, 18-2-101 — 18-2-103, 18-2-313, 18-2-403
- preference
 - federal laws, 18-2-403
 - Indian reservation residents, 18-1-110
 - Montanans, to, 18-1-102, 18-2-409

Federal surplus property, 18-5-201 — 18-5-205**Indians**

- construction contracts, hiring preference, 18-1-110
- cooperative agreements, Title 18, chapter 11, part 1

Interlocal cooperation agreements, Title 7, chapter 11, part 1, See INTERLOCAL COOPERATION**Nondiscrimination provision, inclusion, 49-3-207****Preferences**

- affidavit, 18-1-113
- Indian reservation residents, 18-1-110
- Montana-made goods, for, 18-1-102, 18-1-103
- Montanans, to
 - bids and bidding, 18-1-102, 18-1-103, 18-1-111
 - employment, 18-2-403, 18-2-409
 - residency, determination 18-1-106

Prevailing wage, 18-2-401 — 18-2-403, 18-2-421 — 18-2-424, 18-2-432

- nonconstruction services classification, exemption, 18-2-401

Public funds, repurchase agreements, 7-6-213**School districts, authority, 20-6-101, See also this heading generally; SITES AND FACILITIES; TRANSPORTATION, Contracts; Individual transportation; Private party contracts****Security requirements for contractors, See also Surety bonds**

- bid security - waiver, 18-1-202, 18-2-302
- performance, labor, and materials bonds
 - action on, 18-2-204 — 18-2-207
 - amount and terms, 18-2-203
 - deposits in lieu of, 18-2-201, 18-2-202
 - exceptions, 18-2-208
 - liability for waiver or failure to require, 18-2-202
 - notice of right of action, 18-2-204, 18-2-206 — 18-2-208
 - requirements generally, 18-2-201, 18-2-202, 18-2-208
 - subcontractors, 18-2-201, 18-2-202, 18-2-204 — 18-2-206, 18-2-208
 - waiver, 18-2-201, 18-2-202, 18-2-302

Subcontractors, 18-2-201, 18-2-202, 18-2-204 — 18-2-206, 18-2-208, 18-2-407, 18-2-422, 18-2-424,**See also Contractors****Surety bonds, 18-1-202 — 18-1-204; Title 18, chapter 2, part 2****Surplus property, 18-5-201 — 18-5-205****Teachers, See TEACHERS**

CONTRACTS (Continued)

Violations

- construction of buildings, 18-2-432
- contractors, by, 18-2-409, 18-2-432, 20-6-624
- finances, 20-6-624, 20-6-636
- investigation, 18-2-409
- wages paid by contractor, 18-2-423, 18-2-432

Wages paid by contractors, See also Prevailing wage

- collective bargaining agreements, applicability and effect, 18-2-401, 18-2-402, 18-2-411
- definitions, 18-2-401
- districts, prevailing wage rate, 18-2-401, 18-2-403, 18-2-411
- heavy highway construction wage rates, 18-2-401, 18-2-403
- payroll records, 18-2-423, 18-2-424
- rulemaking authority, 18-2-411, 18-2-431
- scale to be posted when, 18-2-406
- standard prevailing rate, 18-2-401, 18-2-402
 - bid specification and contract to contain, 18-2-403, 18-2-422
 - failure to pay, actions for, 18-2-407
 - payment, method, 18-2-412
- violation and penalty, 18-2-423, 18-2-432

COOPERATIVES, FULL SERVICE EDUCATION

- Audits, Title 2, chapter 7, part 5, See AUDITS, Local government entities
- Contracts, 20-7-451, 20-7-452, 20-7-454
- Creation, authorization, 20-7-451
- Expenditures, 20-7-451
- Funding, 20-7-452, 20-7-455, 20-7-457
- Funds, establishment, 20-7-457
- Management board, 20-7-452, 20-7-455
- Property, 20-7-452
- Special education purposes, for, 20-4-202, 20-7-452, 20-7-457
- Teachers employed by, tenure, 20-7-456

CORPORAL PUNISHMENT OR PHYSICAL RESTRAINT OF PUPILS, 20-4-302**COUNSELORS**

- Gifted and talented children programs, 20-7-901
- K-12 specialist, 20-4-131
- Privileged communications, 26-1-801, 26-1-809
- Professional counselors, 37-23-201
- Special education, allowable costs, 20-7-431

COUNTIES, See LOCAL GOVERNMENT**COUNTY ATTORNEY**

See also COUNTY OFFICERS

Bonds

- district proceedings, advice and assistance, 20-9-436
- County superintendent of schools, legal adviser, 20-1-204, 20-1-205
- Fire safety violations
 - injunction, 50-61-118
 - prosecution, 50-61-117

Trustees

- legal adviser, 20-1-204, 20-1-205
- proceedings against, 20-3-332

COUNTY CLERK AND RECORDER, See COUNTY OFFICERS**COUNTY COMMISSIONERS, BOARD OF**

- Adult education programs, levy authority, 20-7-705
- Adult literacy programs, 20-7-714
- Boundaries of districts
 - record and reports, 20-6-103
 - review, copies, 20-6-215
- Budget amendment resolution, copy to, 20-9-162
- Consolidation of districts, copy of order for, 20-6-423
- County adult literacy board, 20-7-714

COUNTY COMMISSIONERS, BOARD OF (Continued)

- County high schools, unification, duties, 20-6-313
- County superintendent of schools
 - appointment, 20-3-202, 20-3-203
 - expenses, audit, 20-3-203
 - office space, supplies, and staff, 20-3-203
 - part-time office, establishment, 20-3-201, 20-3-213
 - vacancy in office, 20-3-202
- County Transportation Committee, membership, 20-10-131, See also TRANSPORTATION
- Deaf and Blind, Montana School for the - payments to, 20-8-108
- Elections ordered by, 20-20-201, See also ELECTIONS
- Endowment fund reports, 20-9-604
- K-12 districts, attachment of elementary to high school district, copy of order for, 20-6-701
- Levy requirements
 - adult education programs, 20-7-705
 - BASE funding program, for, 20-9-331
 - basic tax for BASE funding program, 20-9-331, 20-9-333
 - bonds, failure to make levy for, 20-9-439
 - building reserve fund, 20-9-503
 - bus depreciation reserve fund, 20-10-147
 - county basic special tax, 20-9-333
 - county basic tax, 20-9-331
 - debt service fund, 20-9-439, 20-9-506
 - failure to set, 20-9-439
 - general fund, 20-9-141, 20-9-142, 20-9-353
 - joint districts, 20-9-151, 20-9-152
 - nonoperating fund, 20-9-506
 - retirement fund, 20-9-501
 - state equalization aid, 20-9-360
 - transportation fund, 20-10-144, 20-10-146
- Metal mines license tax, allocation, 15-37-117
- Property, districts
 - sale to, 7-8-2216
 - valuation statements delivered to, 20-9-122
- Property tax levy, fixing, See also Levy
- Teachers' Retirement System, employer contributions, 19-20-605
- Trustees, suspension when, 20-3-310
- Warrants, county
 - authority of agent returned to, 7-6-2602
 - examination and cancellation, 7-6-2607
 - investments in, 7-6-2701
 - signing, 7-6-2601
 - unpaid, order for payment, 7-6-2605

COUNTY HIGH SCHOOLS, 20-6-101

- Bonding authority, 20-6-101, See also BONDS AND BOND ISSUES
- High school district, as, 20-6-101
- Principals, See PRINCIPALS
- Tuition, See TUITION
- Unification, 20-6-312, 20-6-313

COUNTY OFFICERS

- See also specific officer; PUBLIC OFFICERS OR EMPLOYEES
- Enumeration, 7-4-2203
- Oath, filing, 7-4-101

COUNTY SUPERINTENDENT OF SCHOOLS

- Agents, acting as - prohibited, 20-1-201
- Appeals, See Controversy appeals
- Appointment, 7-4-2203
- Assistants, 20-3-203
- Association of County School Superintendents, membership, 7-5-2146
- Attendance officer, when, 20-3-206, 20-5-104
- Attorneys employed by, when, 20-3-210, 20-4-204

COUNTY SUPERINTENDENT OF SCHOOLS (Continued)

- Bond, official, See PUBLIC OFFICERS OR EMPLOYEES
- Consolidation of office, 20-3-201; Const., XI, 3
- Contract for performance of duties when, 20-3-201
- Controversy appeals, 20-3-210
 - disabilities, children with - appeals pertaining to, disqualification, 20-3-211
 - disqualification of county superintendent when, 20-3-211, 20-3-212
 - out-of-district attendance agreements, 20-3-210, 20-5-320 — 20-5-322
 - teachers, 20-3-210, 20-4-204
 - transfer of territory between districts, 20-6-105
- Correspondence study, supervision, 20-7-116
- County high schools, duties, 20-6-312, 20-6-313
- County transportation committee, chairman of and duties, 20-3-206, 20-10-131
- Defined, 20-1-101
- Deputy, 20-3-203
- District superintendents, reports from, 20-4-402
- Duties generally, 20-3-201, 20-3-205; Const., XI, 3
- Election of, 7-4-2203, 20-3-201; Const., XI, 3
- Expenses, 20-3-203, 20-3-212
- Facility siting, education impact statements, 20-1-208
- Fines for violations, 20-1-201, 20-1-203
- Hearings conducted by, 20-3-107, 20-3-210, 20-6-105
- Home schools, availability of records and notification of student's attendance, 20-5-109
- Hours, office, 20-3-204
- Indigent children, federal funds for, 20-3-205, 20-10-205
- Instructional assistance requested by, 20-7-114
- K-12 dissolution, 20-6-704
- Legal adviser, 20-1-204, 20-1-205
- Levies, 20-3-205
 - adult education, report, 20-7-705
 - building reserve fund, establishment, 20-9-503
 - bus depreciation reserve fund requirements, 20-10-147
 - debt service fund requirement, 20-9-439, 20-9-506
 - general fund requirements, 20-9-141
 - nonoperating fund requirements, 20-9-506
 - retirement fund, 20-9-501
 - school transportation, 20-10-144, 20-10-146
- Library books, recommendations, 20-3-205, 20-7-204
- Meetings, 7-5-2146, 20-3-105
- Nonpublic schools, availability of records, 20-5-109
- Oath of office, 20-1-202, 20-3-201, 20-3-202
- Oaths administered by, 20-3-205, 20-3-210
- Office, 20-3-203, 20-3-204
- Part-time office, 20-3-201, 20-3-204, 20-3-213
- Positions, additional, 20-3-206
- Preservation of documents, 20-3-205
- Property valuation statements delivered to, 20-9-122
- Public Education, Board of - policies, 20-3-205
- Qualifications, 7-4-2203, 20-3-201; Const., XI, 3
- Records, 20-3-205
- Regents of Higher Education, Board of - policies, 20-3-205
- Removal from office, 20-7-608
- Reports
 - annual financial, 20-3-205, 20-3-209, 20-9-211
 - preservation, 20-3-205
 - public education, board of - to, 20-9-344
 - required by, 20-3-324
 - superintendent of public instruction, to, 20-3-106, 20-3-209
 - tuition, 20-5-324
- Retirement system, membership, 19-20-302, Title 19, chapter 20, See RETIREMENT, Teachers' Retirement System
- Salary; Const., XI, 3

COUNTY SUPERINTENDENT OF SCHOOLS (Continued)

- School districts, elementary
 - abandonment, 20-3-205, 20-6-209
 - annexation procedures, 20-6-422
 - attachment to high school district, 20-6-701
 - boundaries, 20-6-105, 20-6-215
 - classification, 20-3-205, 20-6-201
 - consolidation procedures, 20-6-423
 - county high school unification, 20-3-205, 20-6-312, 20-6-313
 - transfer of territory, 20-6-105
- School districts generally
 - alteration, 20-3-205
 - audit reports, filing, 20-3-205, 20-9-203
 - boundary records and reports, 20-3-205, 20-6-103
 - cessation, 20-6-413, 20-6-418
 - levies, *See* Levies
 - organization, 20-3-205
 - out-of-district attendance agreements, 20-5-320 — 20-5-322, 20-5-324
 - reciprocal attendance agreements, 20-5-314
- School districts, high school
 - abandonment, 20-3-205, 20-6-307
 - annexation, procedures, 20-6-422
 - boundary changes, 20-6-105, 20-6-322
 - classification, 20-3-205
 - consolidation, 20-6-423
 - county high school unification, 20-3-205, 20-6-312, 20-6-313
 - transfer of territory, 20-6-105, 20-6-322
- School districts, K-12 — attachment of elementary to high school district, 20-6-701
- School elections
 - ordered by, 20-20-201
 - rescheduling, 20-20-108
 - trustee nominating districts, 20-3-205, 20-3-352 — 20-3-354
- School finance
 - apportionment of money, 20-3-205, 20-9-212
 - audit reports filed with, 20-3-205, 20-9-203
 - average number belonging (ANB), 20-3-205, 20-6-502 — 20-6-504, 20-6-506, 20-6-507, 20-9-313
 - BASE aid, report of payments, 20-9-347
 - BASE funding program, estimations, 20-9-348
 - budgets, 20-3-205
 - budget amendments, 20-3-205, 20-9-162, 20-9-164, 20-9-165
 - final budget, 20-9-134, 20-9-142
 - form, 20-9-353
 - joint districts, procedures, 20-9-151
 - county equalization
 - apportionment of money, 20-3-205
 - federal forest reserve money, apportionment, 20-9-331, 20-9-333
 - finances and penalties proceeds for, reports, 20-9-332
 - debt service fund, duties, 20-9-438, 20-9-439, 20-9-506
 - federal forest reserve money, apportionment, 20-9-331, 20-9-333, 20-10-146
 - food services fund, allocation of federal funds, 20-3-205, 20-10-205
 - funds, duties, 20-3-205, 20-3-208
 - general fund, duties, 20-3-205, 20-9-141, 20-9-348
 - guaranteed tax base aid, reports, 20-9-369
 - isolation applications, procedures, 20-3-205, 20-9-302
 - joint districts, annual reports, 20-9-213
 - levies, *See* Levies
 - money, authority, 20-3-208
 - reports, annual, 20-3-205, 20-3-209, 20-9-211
 - state equalization, apportionment, 20-3-205

COUNTY SUPERINTENDENT OF SCHOOLS (Continued)

School transportation

- apportionment of money, 20-3-205, 20-10-145, 20-10-146
- budget, 20-10-143, 20-10-144, 20-10-146
- bus depreciation reserve fund levy requirements, 20-10-147
- bus driver certificates, filing, 20-3-205, 20-10-103
- committee, county, 20-3-206, 20-10-131
- contracts, copies to, 20-3-205, 20-10-124, 20-10-143
- individual transportation contracts, 20-10-112
- reimbursements, 20-3-205, 20-10-104, 20-10-145, 20-10-146
- reports and information, 20-3-205
- revenues, computation, 20-10-144, 20-10-146
- routing, 20-10-112

School trustees

- additional positions, determination, 20-3-352, 20-3-354
- alternative method of election, petition and order for, 20-3-352
- appointment, 20-3-309, 20-6-203, 20-6-301, 20-6-313
- assistance, 20-3-207
- election certificate, issuance, 20-20-416
- joint boards, clerk, 20-3-206
- meetings, 20-3-205
- nominating districts, 20-3-205, 20-3-353, 20-3-354, 20-3-356, 20-6-313
- oaths, administering and filing, 20-3-205, 20-3-307, 20-3-309
- reports from, 20-3-209, 20-3-324, 20-5-324, 20-9-213
- single-member trustee districts, adoption of plan — notification, 20-3-337
- vacancies, filling, 20-3-309

Schools generally

- indigent children, federal funds for, 20-3-205, 20-10-205
- libraries, 20-3-205, 20-7-204, 20-7-205
- opening or reopening, procedures, 20-3-205, 20-6-502 — 20-6-507
- supervision, 20-3-205
- textbooks, recommendations for selection, 20-3-205, 20-7-602
- tuition, *See* Tuition
- visitations, 20-3-207

Solicitors, acting as — prohibited, 20-1-201

Special education allowable costs, report of payments, 20-9-347

Staff, 20-3-203

Successor, delivering materials to, 20-1-203, 20-3-205

Superintendent of public instruction, duties, 20-3-105, 20-3-205

Supervision of schools, 20-3-205, 20-3-207

Teachers

- appeals, 20-3-210, 20-4-204, 20-4-207
- assistance, 20-3-207
- certificates, registration, 20-3-205, 20-4-202
- dismissal prior to contract expiration, recommendation for and appeal from, 20-4-207
- emergency authorization, registration, 20-3-205
- nontenure, termination — hearing, 20-3-210, 20-4-206
- pupil's truancy, incorrigibility, or suspension — reports, 20-4-302
- reports, submission, 20-4-301
- tenured, 20-4-204, 20-4-208

Term of office, 20-3-202; Const., XI, 3

Territory transfers, 20-6-105

Textbook dealers, duties, 20-3-205, 20-7-602, 20-7-605, 20-7-608

Textbooks, recommendations for selections when, 20-3-205, 20-7-602

Tuition

- discontinued district, debt obligation, 20-6-413
- out-of-district attendance agreements, 20-5-322, 20-5-324
- payments, 20-3-205, 20-5-324
- reciprocal attendance agreements, 20-5-314
- reports, 20-3-205

Vacancy in office, 20-3-202

COUNTY SUPERINTENDENT OF SCHOOLS (Continued)

Violations, 20-1-201, 20-1-203, 20-7-608
 Voting program for youth, participation, 13-22-103

COUNTY TRANSPORTATION COMMITTEE, 20-10-131, 20-10-132

Chairman, 20-3-206, 20-10-131
 Decisions, appeals from, 20-3-107, 20-10-132
 Hearings, 20-3-107, 20-10-132
 Mileage distances, controversy, 20-10-106
 Reimbursement rates, approval for increase, 20-10-132, 20-10-142
 Residence of transportee, controversy, 20-10-105
 Routing responsibilities, 20-10-112, 20-10-132, 20-10-141
 Service areas, establishment, 20-10-111, 20-10-126, 20-10-132
 Special education payments, approval, 20-7-424
 Transportation, direction for, 20-10-121

COUNTY TREASURER

Apportionment of money, 20-3-205, 20-9-212
 BASE aid, 20-9-344, 20-9-346, 20-9-347
 Bonds and bond issues, duties, 20-9-432, 20-9-434, 20-9-435, 20-9-441, 20-9-442, 20-9-443
 Budgets, duties, 20-9-438
 Cessation of district, procedures, 20-6-413
 County high schools, unification, duties, 20-6-313
 Districts, duties generally, 20-9-212
 Drinking and driving prevention programs, license reinstatement fees — duties, 61-2-107, 61-2-108
 Fish, wildlife, and parks — departmental funds allocated to district when, 87-1-603, 87-1-604
 Flood Control Act, federal — money from, 20-9-331
 Forest reserve money, federal, 20-9-331, 20-9-333
 Funds
 cash balance statements, 20-9-121
 common school fund, federal money, 20-9-331
 debt service fund, 20-9-440 — 20-9-443
 endowment fund, liability, 20-9-604
 federal and private money, fund for, 20-3-208
 federal forest reserve money, allocation, 20-9-331, 20-9-333, 20-10-146
 food services fund, allocation of federal funds, 20-10-205
 remittance, 20-9-331
 reports, 20-9-212
 traffic education fund, 20-7-507
 Impact aid fund, 20-9-514
 Investment of money, 20-9-212, 20-9-213
 Joint districts, duties, 20-9-202, 20-9-212
 K-12 district, transitions after formation, 20-6-703
 Lease and rental money deposited with, 20-9-509
 Management of school funds, 7-6-2801
 Notes, tax and revenue anticipation — issuance and sale, 20-9-212
 Out-of-district attendance, tuition and transportation payments, 20-5-324
 Property tax, personal property tax revenue reduction, reimbursement, distribution, 15-1-111
 Public funds, deposit in financial institution, 7-6-201
 liability, 7-6-212
 report by financial institution, 7-6-211
 security, 7-6-207
 Records, 20-9-212, 20-9-215, 20-9-331, 20-9-333
 Reports, 20-9-212, 20-9-344
 School funds, management, 7-6-2801
 Special education allowable costs, report of payments, 20-9-347
 State money, remittance to state treasurer, 15-1-504
 Transportation
 bus depreciation reserve cash balance transfers, 20-10-147
 reimbursements, 20-10-145, 20-10-146
 Vocational-technical programs, receipts for taxes — remittance, 20-9-212

COUNTY TREASURER (Continued)

- Warrants, county
 - cancellation, return for, 7-6-2607
 - investments in, purchase by county, 7-6-2701
 - payment, 7-6-2602
 - redemption, order of, 7-6-2606
 - registration, 7-6-2603
 - unpaid, 7-6-2604, 7-6-2605
- Warrants, school
 - issued, listing provided to, 20-9-221
 - K-12 districts, transition after formation, 20-6-703
 - payment, 20-9-212, 20-9-347
 - registration, 20-9-212
 - unpaid, interest, 7-6-2604

CRIMES

- Assault on a sports official, 45-5-211
- Disorderly conduct, 45-8-101
- Firearms by children under 18, 45-8-344, 45-8-345
- Obscene material to a minor, 45-8-206
- Switchblade knife possession, 45-8-331
- Tobacco possession by a minor, 45-5-637
- Weapon in a school building, 45-8-361

CURRICULUM

- Assistance with, 20-3-106, 20-7-113, 20-7-114
- Correspondence study, 20-5-102, 20-7-116, 20-10-121, 20-10-125, 20-10-142, 20-10-144
- Cultural heritage of Indians, 20-1-501 — 20-1-503
- Establishment and maintenance, 20-3-324
- Guides, file and publication, 20-3-106, 20-7-113
- Home schools, 20-5-109, 20-5-111
- Instructional programs, 20-4-402, 20-7-111
- Music instruction, private, 20-7-115
- Nonpublic schools, 20-5-109
- Secondary education, equivalency of completion, 20-2-121, 20-7-131

D**D.A.R.E. PROGRAM, 44-2-701 — 44-2-705****DEAF AND BLIND, MONTANA SCHOOL FOR THE**

- Admission to, 20-8-103, 20-8-107, 20-8-108
- Assistance to programs, 20-8-102
- Attendance, duration, 20-8-106
- Continuing education programs, 20-8-116
- Designation, 20-8-101
- Employees, communications skills — requirement and exception, 20-8-120
- Employment placement, 20-8-116
- Gifts, donations, or grants, 20-8-101, 20-8-111
- Independent institution, as, 20-8-101
- Indian children, admittance, 20-8-107
- Indigent children, 20-8-108
- Money, expenditure, 20-8-112
- Nonresidents, admittance, 20-8-104, 20-8-107
- Objectives, 20-8-102
- Property, 20-8-110, 20-8-111
- Purposes, 20-8-102
- Retirement system for employees, Title 19, chapter 20, See RETIREMENT, Teachers' Retirement System
- Rules, 20-8-106, 20-8-121
- School term, 20-8-109
- Staff, compensation and qualifications, 20-8-103
- Superintendent, 20-8-103, 20-8-106, 20-8-108, 20-8-113, 20-8-116, 20-8-120, 20-8-121

DEAF AND BLIND, MONTANA SCHOOL FOR THE (Continued)

- Superintendent of public instruction, cooperation with, 20-7-404
- Supervision, 20-8-101
- Suspension, expulsion, or transfer of students, 20-8-106
- Transportation expenses of students, 20-8-121

DEBT SERVICE FUND, See FINANCE**DEFERRED COMPENSATION**

- Administration of program, 19-50-202
- Administrator, 19-50-101, 19-50-102, 19-50-202
- Contracts with political subdivisions, 19-50-201, 19-50-202
- Definitions, 19-50-101
- Eligible plans, 19-50-101, 19-50-102, 19-50-202 — 19-50-204
- Fund, 19-50-101, 19-50-102, 19-50-202
- Liability of public entity, 19-50-204
- Payments authorized, 19-50-203
- Payroll deductions, 19-50-202
- Retirement programs or pension plans, effect on, 19-50-102, 19-50-103
- Rules, 19-50-102, 19-50-201, 19-50-202
- Tax deferments, 19-50-103

DIPLOMAS

- Honorary, 20-3-109

DISABILITIES, see SPECIAL EDUCATION**DISASTER DRILLS, 20-1-401 — 20-1-407****DISCIPLINE OF PUPILS, 20-4-302, 20-5-201****DISCRIMINATION**

- Aiding, coercing, or attempting — unlawful, 49-2-302
- Complaints
 - contested case hearings, 49-2-505
 - dismissal, 49-2-501, 49-2-504, 49-2-511, 49-2-512
 - enforcement, 49-2-508
 - filing, 49-2-501, 49-2-504, 49-2-510
 - findings of discrimination, 49-2-504
 - hearing officer decision, 49-2-506
 - informal settlement, 49-2-504
 - injunction, preliminary, 49-2-503
 - investigation, 49-2-203, 49-2-504
 - mediation, 49-2-504
 - objection to dismissal, 49-2-511
 - retaliation prohibited, 49-2-301, 49-3-209
- Constitutional prohibitions, Const., II, 4; X, 7
- Definitions, 49-2-101, 49-2-305, 49-3-101, 49-4-203
- Disabilities, persons with, 49-4-101
 - access to polling places, 13-3-207
 - canes, white or metallic-colored — use restricted to blind persons, 49-4-213, 49-4-216
 - definitions, 49-3-101, 49-4-203
 - dogs, guide or hearing — right to be accompanied by, 49-4-214, 49-4-216
 - driver or pedestrian approaching blind person, duty and liability, 49-4-216
 - employment, 49-4-101
 - fair practices, code of, Title 49, chapter 3, See Government, state and local
 - interpreters for the deaf in official proceedings, Title 49, chapter 4, part 5
 - penalties, 49-4-102, 49-4-215
 - public places and accommodations, 49-4-211
 - remedy, civil, 49-4-102
 - state policy, 49-4-202
- Employment, 49-2-303
 - governmental, See Government, state and local
 - maternity leave, 49-2-310, 49-2-311
 - preference given when, 49-2-303, 49-2-405, 49-3-103; Const., II, 35
- Equality of individuals, Const., II, 4

DISCRIMINATION (Continued)

- Equality of opportunity
 - goal of people, Const., Preamble
- Exceptions
 - limits, specific, 49-2-403
 - modesty or privacy, provided for, 49-2-404
 - “reasonable” basis, strict construction, 49-2-402
- Fair Practices, Code of, Title 49, chapter 3, See Government, state and local
- Freedom from, declared a civil right, 49-1-102
- Government, state and local
 - complaints, procedures, See Complaints
 - definitions, 49-3-101
 - educational or counseling programs, 49-3-202, 49-3-203, 49-3-301
 - employment of personnel, 49-3-201
 - placement and referral services, 49-3-202
 - preference, 49-2-303, 49-2-405, 49-3-103; Title 39, chapter 29
 - enforcement, 49-3-301
 - funding programs, 49-3-206
 - licenses and charters
 - businesses subject to, discriminatory housing practices, 49-2-510, 49-2-602
 - issuance, discrimination prohibited, 49-3-204
 - local government units affected, 49-3-102
 - permitted distinctions, 49-3-103
 - public accommodations, 49-3-208
 - public contracts, 18-1-110, 18-1-111, 18-2-403, 49-3-207
 - quota system, 49-3-104
 - retaliation prohibited, 49-3-209
 - rules, 49-3-106
 - services and goods, 49-2-308, 49-3-205, 49-3-207
 - training programs, 49-3-201, 49-3-203
- Human Rights, Commission for, 49-2-101, 49-2-205
- Insurance plans, group insurance, contribution provisions, 49-2-303, 49-2-309, 49-3-103
- Investigations, 49-2-203, 49-2-504, 49-3-106
 - retaliation prohibited, 49-2-301, 49-3-209
- Maternity leave, 49-2-310, 49-2-311
- Nepotism, exemption when provisions conflict, 49-2-303, 49-3-201
- Penalties, criminal, 49-2-601
- Public accommodations, 49-2-304, 49-3-208, 49-4-211
- Records, 49-2-102
- Remedies, 49-2-501 — 49-2-506, 49-2-508, 49-2-510, 49-4-102
- Retaliation prohibited, 49-2-301, 49-3-209
- Retirement systems, prohibited, 19-2-403, 19-20-302, 49-2-309
- State, by, 49-2-308, See Government, state and local

DISTRICT SUPERINTENDENT, 20-1-101

- Appointment, 20-3-362, 20-4-401
- Certification, See TEACHERS, Certification
- Conflict of interest, 20-4-401
- Contract, 20-4-401
- Correspondence study, supervision, 20-7-116
- County superintendent of schools, reports to, 20-4-402
- Dismissal, 20-4-401
- Duties, 20-4-402
- Instructional assistance requested by, 20-7-114
- Library books, selection, 20-7-204
- Misappropriation of funds, 20-1-203
- Prayer to open school day, 20-7-112
- Pupils, duties, 20-4-302, 20-5-201
- Report requirements, 20-4-402
- Retirement, Title 19, chapter 20, See RETIREMENT, Teachers’ Retirement System
- Special education assistance, 20-7-403
- Successor, delivering materials to, 20-1-203

DISTRICT SUPERINTENDENT (Continued)

Teachers, duties, 20-4-204, 20-4-207, 20-4-301
 Textbook dealers, complaints against, 20-7-605
 Textbooks selected by, 20-7-602

DISTRICTS AND TRUSTEES

Abandonment of districts, 20-6-209, 20-6-307, 20-9-604
 Absence from district, trustees — effect, 20-3-308
 Actions, trustees
 collective, to be, 20-3-301, 20-3-322, 20-3-362
 immunity from, when, 20-4-110
 Administrative rules with financial impact, 20-7-101
 Adult basic education, funding, 20-7-712
 Adult education, duties, 20-3-324, 20-7-702 — 20-7-705, 20-7-713
 Agents, trustees acting as — prohibited, 20-1-201
 ANB, amounts established for, See AVERAGE NUMBER BELONGING (ANB)

Annexation

bonded indebtedness, 20-6-411
 conditions for, 20-6-421, 20-6-422
 hiring preference for employees, 20-6-410
 procedures, 20-6-422
 tenure protection, 20-6-410
 tuition debt, assumption, 20-6-413

Appeals, See Controversy appeals

Appeals by pupil or pupil's parent or guardian, 20-5-201

Appeals by trustees, 20-3-210

Appointment of relative, 2-2-302

Appointment of trustees, 20-3-307, 20-3-309

 additional positions, 20-3-353, 20-3-354

 county high school unification, 20-6-313

 districts

 consolidation, 20-6-423

 high school, classification changes, 20-6-301

 new districts, creation, 20-3-312

Attachment of elementary to high school district, See K-12 districts

Attorneys employed by, when, 20-1-204, 20-9-436

Audits, 20-9-203, 20-9-213; Title 2, chapter 7, part 5, See AUDITS

Average number belonging, amounts established for, See AVERAGE NUMBER BELONGING (ANB)

Bequests, acceptance, 20-6-601

Bids, See SITES AND FACILITIES, Contracts

Board of Public Education — enforcement and reports, 20-3-323, 20-3-324

Bonds and bond issues, See BONDS AND BOND ISSUES

Boundaries, generally, See also Elementary districts; High school districts

 adjustments, 20-6-103, 20-6-214, 20-6-322

 changes

 actions concerning, 20-3-324

 bonded indebtedness, how affected, 20-6-411

 effect, 20-3-312

 property disposition, 20-6-417

 property tax valuation after, 20-6-412

 transfer of territory, 20-6-105

 existing, confirmation, 20-6-102

 legal descriptions, 20-6-103

 record, permanent, 20-3-205, 20-6-103

Budgets, 20-3-324, See BUDGETS AND BUDGET SYSTEM

Buildings, See SITES AND FACILITIES

Buses, prohibition of operation of amber or red lights when, 61-8-351, See also

 TRANSPORTATION

Career and vocational/technical programs, funding, 20-7-305, 20-7-306

Certification Standards and Practices Advisory Council, representation on, 2-15-1522

Cessation of district, 20-6-413, 20-6-418

DISTRICTS AND TRUSTEES (Continued)

Chairman of trustees

- bonds, execution, 20-9-433
- budget amendment, signing, 20-9-165
- budget form, signing, 20-9-133
- county high school principal, execution of contract, 20-4-401
- district superintendent, execution of contract, 20-4-401
- joint board, 20-3-361
- selection, 20-3-321
- teacher contracts, execution, 20-4-201
- transportation contracts, signing, 20-10-124
- warrants, countersignature, 20-9-221

Classification of districts, 20-3-205, 20-6-201, 20-6-301, 20-6-702

Clerk of the district

- appointment, 20-3-321, 20-3-325
- ballots, preparation, 20-20-401
- bonds, duties, 20-9-433, 20-9-434, 20-9-442
- budget amendment, signing, 20-9-165
- budget, duties, 20-9-115, 20-9-133
- collective bargaining exclusion, 39-31-103
- county high school principal, execution of contract, 20-4-401
- district superintendent, execution of contract, 20-4-401
- duties, 20-3-325
- election administrator, as, 13-1-101
- finances for violations, 20-1-203
- misappropriation of funds, 20-1-203
- resignation of trustee, 2-16-502
- successor, delivering materials to, 20-1-203
- teacher contracts, execution, 20-4-201
- trustees
 - nominations for candidacy, submission to, 20-3-305, 20-3-344
 - positions, publication of notice for increase, 20-3-341
- warrants, countersignature, 20-9-221

Closure of schools, 20-3-324, 20-6-505, 20-6-509

Collective bargaining of employees, 20-4-203, 39-31-103, 39-31-304 — 39-31-306, See also

COLLECTIVE BARGAINING

Conflict of interest, trustees, 20-9-204

Consolidation

- bonded indebtedness, 20-6-411, 20-6-414, 20-6-422, 20-6-423
- cash disposition following, 20-6-414
- hiring preference for employees, 20-6-410
- order for, 20-6-423
- procedures, 20-6-410, 20-6-423
- tenure protection, 20-6-410
- tuition debt, assumption, 20-6-413
- two or more counties, districts in, 20-6-423

Contracts

- bid security, 18-1-201 — 18-1-206
- execution, 20-9-213
- materials, supplies, or equipment, See, generally; **SITES AND FACILITIES**
- overdue accounts, interest assessment, 20-9-225 — 20-9-227
- teachers, See **TEACHERS**
- transportation, See **TRANSPORTATION**, Contracts; Individual transportation; Private party contracts

Controversy appeals

- joint boards, proration of expenses, 20-3-362
- teachers
 - nontenure, termination, 20-4-206
 - tenured, 20-4-204, 20-4-208

Cooperative agreements, financial administration, See **FINANCE**, Interlocal cooperative agreements

DISTRICTS AND TRUSTEES (Continued)

Cooperatives, full service education, Title 20, chapter 7, part 4, See COOPERATIVES, FULL

SERVICE EDUCATION

Corporate powers, 20-6-101, 20-9-437

Correspondence study provided when, 20-7-116

County high schools

definition, 20-6-101

high school districts, as, 20-6-101, See also High school districts

principals, appointment or dismissal, 20-4-401

unification, 20-3-205, 20-6-312, 20-6-313

County superintendent of schools

assistance, 20-3-207

money, approval regarding, 20-3-208

reports to, 20-3-106, 20-3-324

County transportation committee, membership, 20-10-131

Creation of district, See Elementary districts; High school districts

Curriculum for schools, establishment and maintenance, 20-3-324

Deaf and Blind, Montana School for the — liaison, 20-8-113

Definitions, 20-1-101, 20-3-336, 20-6-101, 20-6-701, 20-7-401, 20-7-305, 20-9-402, 20-9-512, 44-2-511

Devises, acceptance, 20-3-324, 20-6-601, 20-9-604

Disabilities, persons with — employment, Title 49, chapter 3

Discriminatory practices, See DISCRIMINATION

District superintendent, See DISTRICT SUPERINTENDENT

Donations to, 20-6-601

Driver education, establishment of nonbudgeted fund, 20-3-324, 20-7-507, See also TRAFFIC EDUCATION

Drug Abuse Resistance Education (D.A.R.E) Program, 44-2-701 — 44-2-705

Educational associations, membership, 20-1-211

Election of trustees, 20-3-301, See also ELECTIONS

Elections, duties, See School elections; See also ELECTIONS

Electronic voting systems, 20-20-421, 13-17-101 to 13-17-306

Elementary districts, 20-6-101

abandonment, 20-3-205, 20-6-209, 20-9-604

annexation, See ANNEXATION OF DISTRICTS

attachment to high school district, 20-6-101, 20-6-701, 20-6-703

boundaries, 20-6-214, 20-6-215

boundary changes, 20-6-105, 20-6-202, 20-6-215

classification, 20-3-205, 20-6-201, 20-6-702

consolidation, See CONSOLIDATION OF DISTRICTS

county high school unification, 20-6-312, 20-6-313

creation, moratorium, 20-6-104

high school districts

abandonment, effect, 20-6-307

as, when, 20-6-101

attachment of elementary district, 20-6-101, 20-6-701, 20-6-703

inactive when, 20-6-101, 20-6-701

joint

transfer of territory, creation by, 20-6-105

relocation of school within, 20-6-218

transfer of territory, 20-6-105

trustee positions, See Positions of trustees; ELECTIONS, Trustees

tuition, See TUITION

Eligibility for office of trustee, 20-3-305

Emergency, unforeseen

bid requirements, exception, 20-9-204

meetings, 20-3-322

Employees and officers, See also PUBLIC OFFICERS OR EMPLOYEES

agents or solicitors, acting as — prohibited, 20-1-201

bond payment funds, liability, 20-9-444 — 20-9-446

budget expenditures, liability, 20-9-133

collective bargaining, 39-31-103, 39-31-304, See also COLLECTIVE BARGAINING

DISTRICTS AND TRUSTEES (Continued)

Employees and officers (Continued)

- convention expenses allowed when, 20-1-211
- corporal punishment or physical restraint of pupils, 20-4-302
- county transportation committee, membership, 20-10-131
- employment or dismissal generally, 20-3-324, 20-6-711
- expenditures, liability, 20-9-133
- finances for violations, 20-1-201
- group insurance, 20-3-331, See PUBLIC OFFICERS OR EMPLOYEES, Group benefits
- hiring preference when, 20-6-410, 20-6-711
- hours of employment, 39-4-107
- K-12 districts, tenure and hiring provisions, 20-6-711
- missing child investigations, confidentiality when, 44-2-511
- post-retirement health care account, 2-18-1311
- records, destruction allowed when, 20-9-215
- retirement, Title 19, chapters 2, 3 and 20, See RETIREMENT
- sick leave, fund for payment upon termination of employment, 20-9-512
- textbook dealers' emoluments or inducements, acceptance prohibited, 20-7-608
- travel expenses, 20-1-211
- vacation leave, fund for payment upon termination of employment, 20-9-512

Enrollment in schools

- excused when, 20-5-102
- nonpublic nonaccredited school, from — assessment policy, 20-3-324, 20-5-110

Executive officer of trustees, 20-4-402

Existing districts, confirmation, 20-6-102

Expenses of trustees, 20-1-211, 20-3-311

Facilities, See SITES AND FACILITIES

Fair Practices, Code of, Title 49, chapter 3, See DISCRIMINATION, Government, state and local

Financial administration of schools, See FINANCE

Financial reports, Title 2, chapter 7, part 5, See AUDITS

Fines for trustees' violations, 20-1-201, 20-1-203, 20-6-624, 20-9-435

Fish, wildlife, and parks, departmental funds allocated to, when, 87-1-603, 87-1-604

Five-year-old schooling, establishment, 20-7-117

Flag, American, procurement and display, 20-3-324

Food services, 20-3-324, 20-10-204, See also FOOD SERVICES

Forms distributed to, 20-3-105

Foster Care Review Committee

- child abuse and neglect records, disclosure, 41-3-205
- representation on, 41-3-115

Funds, 20-3-324, See also FINANCE, Funds generally

- adult education, establishment, 20-7-705
- investment, 20-9-213
- misappropriation, 20-1-203, 20-3-332
- traffic education, establishment, 20-7-507

Gifted and talented children programs, See GIFTED AND TALENTED CHILDREN PROGRAMS

Gifts, acceptance, 20-3-324, 20-6-601, 20-7-803, 20-9-604, 20-10-204

Governance by trustees, 20-3-323

Grade assignments, designation, 20-6-501

Grants, acceptance, 20-6-601

Health regulations, copies to, 50-1-206

Hearings, 20-3-337, 20-4-204, 20-4-207, 20-5-110

High school districts, 20-6-101

- abandonment, 20-3-205, 20-6-307, 20-9-604
- annexation, see ANNEXATION OF DISTRICTS
- attachment of elementary district, 20-6-101, 20-6-701, 20-6-703
- boundary changes, 20-6-308, 20-6-314, 20-6-322, 20-6-422, 20-6-423
- classification, 20-3-205, 20-6-301
- consolidation, See CONSOLIDATION OF DISTRICTS
- county high schools as, 20-6-101, See also County high schools
- county transportation committee, representation on, 20-10-131

DISTRICTS AND TRUSTEES (Continued)

High school districts (Continued)

creation, 20-6-314

moratorium, 20-6-104

elementary districts

attachment, 20-6-101, 20-6-701, 20-6-703

joint

annexation, 20-6-314

creation, 20-6-308

organization, 20-6-308, 20-6-422, 20-6-423

transfer of territory, 20-6-105, 20-6-308, 20-6-322, 20-6-416

trustee positions, See Positions of trustees; ELECTIONS, Trustees

Highway traffic safety program, 61-2-101 — 61-2-105, See also TRAFFIC SAFETY PROGRAM

Immunity from liability

districts, 2-9-105

trustees, 2-9-111, 20-3-332, 20-4-110

Instructional programs, recommendations for, 20-4-402

Instructional services, establishment, 20-3-324

Insurance, See also INSURANCE

employees' group insurance, 20-3-331, See PUBLIC OFFICERS OR EMPLOYEES, Group benefits

liability, requirements, 20-3-331, 20-10-109, 20-10-124

property, requirements, 20-6-608

school buses, 20-3-331, 20-10-107, 20-10-109, 20-10-124, 20-10-143

school transportation requirements, 20-10-107, 20-10-109, 20-10-124, 20-10-143

self-insurance plan, 2-9-211, 20-3-331

special education, proration, 20-7-435

Interest assessment on overdue accounts, 20-9-225 — 20-9-227

Interlocal cooperative agreements, 20-3-324; Title 7, chapter 11, part 1, See FINANCE;

INTERLOCAL COOPERATION

Interstate school agreements, joint, 20-9-705

Isolated schools, 20-3-106, 20-3-205, 20-3-324, 20-9-302, 20-9-303

Joint boards of trustees

budget procedures, See FINANCE, Joint districts

clerk, 20-3-206

dissolution when, 20-3-361

district superintendent, appointment, 20-3-362, 20-4-401

existence, period of, 20-3-361

junior high schools, opening or closing, 20-3-362, 20-6-505, 20-6-509

organization and officers, 20-3-361

powers, 20-3-362

secretary, compensation, 20-3-311

special education services, 20-3-362, 20-7-457

teachers or specialists, employment, 20-3-362, 20-4-201

voting membership, 20-3-361

Judgments against, funding, 2-9-316, 20-9-161, 20-9-403, 20-9-435, 20-9-471

K-12 districts, see K-12 DISTRICTS

Kindergartens, establishment, 20-7-117

Kindergarten through grade 12 system, establishment, 20-6-508

Lease-purchase agreements, 20-6-609

Legacies for school purposes, 20-9-604

Legal adviser, 20-1-204, 20-1-205

Levies, 20-3-324, 20-7-705, See PROPERTY TAX, Levies

Liability

bond payment funds, 20-9-444 — 20-9-446

bonds, for, 20-9-437

budget, expenditures, 20-9-133

insurance, requirements, 20-3-331, 20-10-109, 20-10-124, 20-10-143

legislative acts, immunity from, 2-9-111

personal, 20-3-332

Loans, long-term - replacement of property, 20-6-640

DISTRICTS AND TRUSTEES (Continued)

- Meetings of trustees, 20-3-322
 - bond issue petitions, consideration, 20-9-425
 - budget, 20-3-322, 20-9-115, 20-9-131
 - budget amendment, 20-9-163, 20-9-165
 - county superintendent of schools, called by, 20-3-205, 20-3-311
 - elections, to call, 20-20-203
 - failure to attend, 20-3-308
 - minutes, 20-3-323, 20-6-703
 - organization, 20-3-321, 20-3-322
 - teachers, tenured - termination hearings, 20-4-204
 - transportation contracts, for, 20-10-125
 - travel expenses, 20-3-311
- Merger, See CONSOLIDATION OF DISTRICTS
- Minorities, voting rights - protection, 20-3-336, 20-3-337
- Misappropriation of funds, 20-1-203, 20-3-332
- Missing children, duties, 44-2-506, 44-2-507, 44-2-511
- Name of district, 20-6-101
- Neglect of duty by trustees, 20-9-444
- Nepotism provisions, nonapplicability when, 2-2-302
- New duties, financing, 1-2-113
- Nonoperating districts, See Elementary districts, abandonment; High school districts, abandonment
- Nonpublic nonaccredited school placement of child in public school, assessment policy, 20-3-324, 20-5-110
- Nurses, employment or dismissal, 20-3-324
- Oath of office, trustees, 20-1-202, 20-3-205, 20-3-307, 20-3-309
- Officers, See Employees and officers
- Opening or reopening schools, 20-3-324
 - elementary schools, 20-6-502
 - high schools, 20-3-106, 20-6-503
 - junior high schools, 20-3-106, 20-6-504, 20-6-505
 - middle schools, 20-6-507
- Out-of-district attendance agreements, 20-5-320 — 20-5-324
- Overdue accounts, interest assessment, 20-9-225 — 20-9-227
- Personnel, See Employees and officers
- Physicians retained by, when, 20-3-324
- Playgrounds, See Public recreation programs
- Policies, prescription and enforcement, 20-3-323
- Positions of trustees
 - additional, 20-3-302, 20-3-341, 20-3-343, 20-3-352, 20-6-201, 20-6-301
 - redetermination, 20-3-205, 20-3-354
 - boundary changes, effect, 20-3-312
 - elementary districts, 20-3-302, 20-3-341, 20-3-352, 20-6-201
 - high school districts, 20-3-302, 20-3-351
 - additional, request and determination, 20-3-205, 20-3-352, 20-6-301, 20-6-313
 - alternative method of election, 20-3-352
 - county high school, operating, 20-3-356
 - nominating districts, establishment and purpose, 20-3-205, 20-3-353, 20-3-354, 20-3-356, 20-6-313
 - nonvoting, establishment when, 20-3-352
 - number prescribed, 20-3-301, 20-3-341, 20-3-351, 20-6-702
 - reduction, 20-3-341
 - term, See Term of office of trustee
 - vacated, See Vacancy in office of trustee
 - variance in number, 20-3-301, 20-3-341, 20-3-351
- Powers and duties of trustees, 20-3-324, 20-6-101
 - actions to be collective, 20-3-301, 20-3-322, 20-3-362
 - boundary changes, effect, 20-3-312
 - joint boards, 20-3-362
- Preschool programs, establishment, 20-7-117, 20-7-411
- Principals, employment or dismissal, 20-3-324

DISTRICTS AND TRUSTEES (Continued)

Property, authority, 20-3-324, 20-6-417, 20-6-602, 20-6-604, 20-6-609, 20-6-703, See also

PROPERTY

Public recreation programs

activities, conduct, 20-7-802, 20-7-803
authorization, 20-7-801
board of recreation, creation, 20-7-802
directors and instructors, 20-7-803, 20-7-804
funding, 7-16-4107, 20-7-801
gifts, acceptance, 20-7-803
operation, 7-16-4108, 20-7-802
school property, 20-7-804, 20-7-805

Pupil instruction days, 20-1-301

Pupils, See STUDENTS

Qualifications of trustees, 20-3-305, 20-3-307 — 20-3-309

Records, 20-3-323

accounting, 20-9-213
cessation of district, surrender, 20-6-418
K-12 districts, transitions after formation, 20-6-703
old, destruction when, 2-6-403, 2-6-404, 20-1-212, 20-9-215
retention, 2-6-401 — 2-6-404, 20-1-212, 20-9-215
school records transfer, 20-1-213

Recreation, Board of — creation, 20-7-802

Recreation programs, See Public recreation programs

Relatives, appointment, 2-2-302

Religious instruction released time program provisions, 20-1-308

Removal of trustees from office, 20-3-308, 20-3-310, 20-3-332, 20-7-608

Reorganization of district generally

bonded indebtedness, effect of boundary changes, 20-6-411
cash disposition, 20-6-413 — 20-6-416
K-12 districts, formation, See K-12 districts
property disposition, 20-6-417, 20-6-703
property tax valuation, effect of boundary changes, 20-6-412
tuition debt, levy for - when, 20-6-413

Reports

distribution to, 20-3-105
failure to make, 20-9-344
fiscal, 20-3-106, 20-7-306, 20-9-213
preparation, 20-3-325
required when, 20-3-324, 20-5-324, 20-9-344
special education expenditures, 20-7-431

Residence of trustee changed, effect, 20-3-308

Resignation of trustee, 2-16-502, 20-3-308

Rules with fiscal impact, 20-7-101

School elections

canvass of votes, 20-20-415
certificate of, issuance, 20-20-416
county election administrator requested to conduct, 20-20-401, 20-20-417
duties generally, 20-3-324, 20-20-401
electronic voting systems, 20-20-421; see also Title 13, chapter 17
judges, 20-20-107, 20-20-203
notice, 20-20-204
poll hours, 13-1-106, 20-20-106, 20-20-203
polling places, 13-1-106, 20-20-106, 20-20-203
resolutions for, 20-20-201, 20-20-203
voting machines, 20-20-421; See also Title 13, chapter 17

School finance, duties generally, 20-3-324, See FINANCE

School lunch programs, See FOOD SERVICES

School transportation

bus drivers, certification, 20-10-103
buses, 20-10-109, 20-10-110
contracts, 20-10-104, 20-10-107

DISTRICTS AND TRUSTEES (Continued)

School transportation (Continued)

- county transportation committee, 20-10-131
- duties generally, 20-3-324, 20-10-107, 20-10-121
- mileage distances, controversy, 20-10-106
- out-of-district attendance agreements, 20-5-320 — 20-5-324
- policies or rules, 20-10-104
- residence of transportee, controversy, 20-10-105

Secretary of trustees, 20-3-311, 20-3-321, 20-3-361

Single-member trustee districts, 20-3-336 — 20-3-338

Sites and facilities, 20-3-324, See **SITES AND FACILITIES**

Social security provisions, Title 19, chapter 1, See **SOCIAL SECURITY**

Special education, See also **SPECIAL EDUCATION**

- allowable costs, reimbursement - application for, 20-9-321
- assistance, 20-7-403
- attendance, 20-7-421, 20-7-422
- cooperative contracts, See **SPECIAL EDUCATION**, Cooperatives
- determination of children in need, 20-7-414
- establishment of programs, 20-3-324, 20-7-411
- expenditures, accounting, 20-7-431
- surrogate parent, 20-7-461 — 20-7-463

Specialist certification, See **TEACHERS**, generally

State mandates to districts, 1-2-113

State-Tribal Cooperative Agreements Act, Title 18, chapter 11, part 1

Statutes imposing new duties, means of financing, 1-2-113

Student Assessment, 20-3-324

Successor trustees, delivering materials to, 20-1-203

Superintendent, district, See **DISTRICT SUPERINTENDENT**

Superintendent of public instruction, reports and rules, 20-3-323, 20-3-324

Supervision, 20-3-106, 20-3-207; Const., X, 8

Suspension of trustees, 20-3-310

Teacher aides, employment or dismissal, 20-3-324

Teachers, See also **TEACHERS**

- administrative positions, transfer from - hearing and appeal, 20-4-208
- certificate reprimand suspension or revocation, 20-4-110, 20-4-113, 20-4-114
- dismissal, 20-3-324, 20-4-207
- employment, 20-3-324, 20-4-110, 20-4-201
- in-service training, 20-4-304
- K-12 districts, 20-6-711
- nontenure, duties, See **TEACHERS**
- pupil's truancy, incorrigibility, or suspension - notification, 20-4-302
- salary withheld when, 20-4-301
- tenure provisions, See **TEACHERS**
- termination, 20-3-210, 20-4-110, 20-4-204, 20-4-206, 20-4-207

Teachers' retirement system, participation, 20-3-324

Telecommunications network (METNET), 20-32-101 — 20-32-104

Term of office of trustee

- additional positions, 20-3-355
- elementary districts
 - classification changed, determination, 20-3-343
 - creation and consolidation, determination, 20-3-342
- expiration, legislative intent, 20-3-302
- generally, 20-3-301
- lot, drawn by — when, 20-3-342, 20-3-343, 20-3-352, 20-3-355
- vacated position, election or appointment to fill, 20-3-303, 20-3-309

Textbook dealers' emoluments or inducements, acceptance prohibited, 20-7-608

Textbooks, 20-3-324, 20-4-402, 20-7-601, 20-7-602, See also **TEXTBOOKS**

Tobacco-free areas, designation, 50-40-201, See also **SMOKING IN PUBLIC PLACES**

Traffic education, establishment of nonbudgeted fund, 20-3-324, 20-7-507, See also **TRAFFIC EDUCATION**

Traffic safety program, 61-2-101 — 61-2-105, See **TRAFFIC SAFETY PROGRAM**

Transfer of territory, See **Elementary districts**; **High school districts**

DISTRICTS AND TRUSTEES (Continued)

- Transportation service areas, 20-10-126, See TRANSPORTATION
- Tuition, duties, 20-3-324, 20-5-320 — 20-5-324
- Vacancy in office of trustee, 20-3-308, 20-3-309
 - election to fill, See ELECTIONS, Trustees
 - term after election or appointment, 20-3-303, 20-3-309
 - unfilled when, 20-6-301
- Veterans' employment preference, Title 39, chapter 29, See VETERANS
- Violations by trustees
 - agents or solicitors, acting as, 20-1-201
 - bonds, nonpayment of sale money to county treasurer - penalty, 20-9-435
 - building plans and specifications, violations concerning, 20-6-624
 - contracts, pecuniary interest, 20-9-204
 - district, employment by, 20-9-204
 - misappropriation of funds, 20-1-203, 20-3-332
 - successor, nondeliverance of materials to, 20-1-203
 - supplies, association with furnishing to schools, 20-9-204
 - teachers, employment relationship - report of termination or nonrenewal, failure to make, 20-4-114
 - textbook dealers' emoluments or inducements, acceptance, 20-7-608
- Visitation of schools, 20-3-324
- Vocational education, 20-3-324, 20-7-303, 20-7-305, 20-7-306, 20-7-308
- Voting machines, 20-20-421; See also Title 13, chapter 17
- Voting rights of minorities, protection, 20-3-336, 20-3-337
- Warrants, See WARRANTS
- Youth Placement Committee, representation on and duties, 41-5-121, 41-5-122

DONATIONS TO SCHOOLS, 20-9-601**DRIVER EDUCATION, See TRAFFIC EDUCATION****DRUG ABUSE RESISTANCE EDUCATION (D.A.R.E.) PROGRAM, 44-2-701 — 44-2-705****DRUGS, DANGEROUS**

- Criminal sale on or near school property, 45-9-109
- Drug use/criminal activity, disclosure, 41-5-215
- Health education, drug and alcohol instruction, 20-25-601 — 20-25-604

E**ELECTIONS**

- Acclamation, 20-3-313
- Annual, to be, 20-3-304, 20-20-105
 - once each calendar year, 20-20-105
- Administrators, 13-1-301
 - duties of, 13-2-112, 13-2-115 — 13-2-117, 13-12-212
- Ballots
 - absence or incapacity, prospective - voting before election day, 13-13-222
 - absentee ballots, 13-13-201
 - application for, 13-13-211 — 13-13-213
 - availability, 13-13-205, 20-9-426, 20-20-204, 20-20-401
 - certificate, 13-13-233
 - death of absentee elector, effect, 13-13-204, 13-15-108
 - delivery to election judges, 13-13-232, 13-13-233
 - deposit, 13-13-241, 13-13-244
 - destroyed or not received, 13-13-204
 - disposition, 13-1-303
 - examination of envelopes and affirmations, 13-13-241
 - facsimile transmission, voting by, 13-21-104, 13-21-207
 - federal write-in absentee ballots, 13-21-205, 13-21-206
 - issue, 13-13-233
 - mailing to elector, 13-13-214
 - marking and affirming, 13-13-231, 13-13-241
 - opening of envelope after deposit, 13-13-244

ELECTIONS (Continued)

Ballots (Continued)

absentee ballots (Continued)

pollbooks, 13-13-234

printing errors, 13-12-204, 13-13-204

qualification for voting by, 13-13-201, 13-13-211

receipt by election administrator, disposition upon, 13-13-231, 13-13-232

record, 13-13-233

rejection, 13-13-232, 13-13-241, 13-15-108

special absentee election board, voting before, 13-13-225, 13-13-229, 13-15-108

absentee election boards, special, 13-13-213, 13-13-225 — 13-13-230

certification, 20-20-401

counting, 13-15-101 — 13-15-105, 13-15-111, 13-15-201, 13-15-204, 13-15-205

disabled electors, 13-13-118, 13-13-119, 13-13-211, 13-13-212

disposition of materials, 13-1-303, 13-13-231, 13-13-241

election by, 20-20-103

form, 13-12-201 — 13-12-205, 13-12-207, 13-12-210, 13-12-212, 13-12-214

annexation of district, 20-6-422

bond issues, 20-9-426, 20-9-427

building reserve proposition, 20-9-502

consolidation of district, 20-6-423

county high school unification, 20-6-312

general fund budget, additional financing, 20-9-353

interstate school agreements, joint, 20-9-705

trustee elections, 20-3-306

instructions for electors, 13-13-112, 13-13-214

mail ballot election, 13-19-106, 13-19-206, 13-19-311

one ballot to elector, 13-13-116

pollbooks, 13-13-115, 13-13-234

secret, to be, 13-1-102

stamped, to be, 13-13-116

voting, method of, 13-13-117, 13-13-229; See also Title 13, chapter 17

youth voting program, Title 13, chapter 22, See Youth voting program

Bond issues, See BONDS AND BOND ISSUES

Building reserve proposition, 20-9-502

Buildings, See Sites and facilities

Bus depreciation reserve cash balance transfers, for, 20-10-147

Calling of

bus depreciation reserve cash balance transfers, 20-10-147

county high school unification, 20-6-312

districts

annexation, 20-6-422

consolidation, 20-6-423

general fund budget, additional financing, 20-9-308, 20-9-353, 20-20-105

generally, 20-3-324

junior high schools, opening, 20-6-505

over-BASE budget, amount exceeding limitations, 20-9-308, 20-9-353

resolution for, 20-20-201

school sites and facilities, 20-6-603, 20-6-621

trustee elections, 20-3-306, 20-3-352

Cancellation when, 13-1-304, 13-2-402, 20-20-108

Canvassing of votes, 13-15-101, 13-15-201, 13-15-204, 13-15-205; 13-15-401 — 13-15-406

annexation election, 20-6-422

bond issues, 20-9-428

consolidation election, 20-6-423

county canvass, 13-15-401 — 13-15-406

generally, 20-20-415

Certificate of election, 13-15-204, 20-3-324, 20-20-416

bond issues, 20-9-428

county high school unification, 20-6-312

ELECTIONS (Continued)

Certificate of election (Continued)

districts

- annexation, 20-6-422
- consolidation, 20-6-423

trustees, 20-3-307

Challenges, See Electors

Clerk, 20-20-402

Closure of school for, 20-1-305

Conduct of, 20-3-324, 20-20-411

bond issues, 20-9-427

building reserve election, 20-9-502

bus depreciation reserve cash balance transfers, 20-10-147

county election administrator, by, 20-20-401, 20-20-417

county high school unification, 20-6-312

districts

- annexation, 20-6-422
- consolidation, 20-6-423

general fund budget, additional financing, 20-9-353, 20-20-105

interstate school agreements, joint - election for, 20-9-705

junior high schools, opening, 20-6-505

school sites and facilities, 20-6-603, 20-6-621

time limitation, 20-20-202

trustee elections, 20-3-306, 20-3-313, 20-3-352

Contests, Title 13, chapter 36

County government, 13-2-117

bond issues, See BONDS AND BOND ISSUES

Date, 13-1-104, 20-3-304, 20-20-105

Definitions, 13-1-101, 20-20-101

Disaster, declaration of - cancellation of election, 20-20-108

Districts, 13-3-104

Election administrator, 13-1-101, 13-2-112, 13-2-115, 13-2-116, 13-2-122, 13-2-123, 20-20-401, 20-20-417, and See this heading generally

Electors, 13-1-101

absentee ballots, See Ballots

age, 13-1-111, 13-1-114

arrest, privilege from, 13-1-115

bond issues, special - petitions, 20-9-421, 20-9-423

challenges, 13-13-301, 20-20-303

affidavits and information, 13-13-301, 13-15-107

ballots, handling and counting, 13-13-603, 13-15-107

grounds, 13-13-301

list of challenges to be kept, 13-15-205

right to vote, 13-13-301

disability, voter with — of, 13-13-118

change of address, 13-2-512

confirmation of registration, 13-2-207

contests, Title 13, chapter 36

disabled electors, 13-3-201, 13-3-202, 13-3-205 — 13-3-207, 13-3-211 — 13-3-213, 13-13-118, 13-13-119, 13-13-201, 13-13-211, 13-13-212, 13-13-222, 13-13-234, See also Ballots,

absentee ballots

elementary districts

- annexation petitions, 20-6-422
- consolidation petitions, 20-6-423
- transfer of territory, 20-6-105

instructions for, 13-13-112, 13-13-214

list of electors, 13-2-122, 13-2-123

nominating districts, high school - requirements, 20-3-353

poll watchers, announcement of name, 13-13-120

qualifications, 13-1-111, 20-3-338, 20-20-301, 20-20-303

registered, lists of, 13-2-112, 13-2-115, 13-13-114, 20-20-201, 20-20-312, 20-20-313

registration, closure, 20-20-311

ELECTIONS (Continued)

Electors (Continued)

- residence, 13-1-111 — 13-1-114
- trustees, alternative method of election - petition requesting, 20-3-352

Electronic voting systems, 20-20-421; Title 13, chapter 17

Elementary districts

- annexation, 20-6-422
- consolidation, 20-6-423

Emergency

- declaration of - cancellation of election, 20-20-108
- unforeseen - rescheduled, 20-20-105

Expenses, 20-20-107, 20-20-313

Facsimile transmission, registration and voting by, 13-21-104, 13-21-207

Federal write-in absentee ballots, 13-21-204 — 13-21-206

Forms, 20-20-104

General election, 13-1-101

- holding, time for, 13-1-104
- holiday, general election day, 1-1-216, 20-1-305

General fund budget, additional financing, 20-9-353

Held when, 13-1-104, 13-1-107, 20-3-304, 20-20-105

High school districts

- annexation, 20-6-422
- consolidation, 20-6-423

Instruction of election judges, 13-4-203

Interstate school agreements, joint, 20-9-705

Judges, 13-13-101

- absentee, appointment for, 20-20-402
- appointment, 13-4-101 — 13-4-107, 20-20-203
- ballots, duties, See Ballots, generally
- challenges, duties, See Electors, challenges
- disabled electors, 13-13-118, 13-13-119
- duties of chief, 13-4-201
- emergencies, 13-4-207
- instructions, 13-4-203
- lists of registered electors, delivery, 20-20-313
- oath, 13-4-105, 13-13-101, 20-20-410
- payment, 13-4-106, 20-20-107
- training, 13-1-203

Junior high schools, opening, 20-6-505

Mill levy election, 15-10-425

Minorities, voting rights - protection, 20-3-336, 20-3-337

Nonpartisan, 13-14-111 — 13-14-118

Notice for, 20-20-204

- bond elections, 20-9-427
- canceled election, 20-20-108
- special elections, 13-1-108

Obstructions, preventing, 13-13-122

Over-BASE budget, amount exceeding limitations, 20-9-353

Petitions for

- bond issues, See BONDS AND BOND ISSUES
- county high schools, unification, 20-6-312
- districts
 - annexation, 20-6-422
 - consolidation, 20-6-423
- trustees, alternative method of election, 20-3-352

Pollbooks, 13-13-115, 13-13-234

Poll hours, 13-1-106, 20-20-106, 20-20-203, 20-20-204

Polling places, 20-20-203

- accessibility, 13-3-201, 13-3-202, 13-3-205 — 13-3-207, 13-3-211 — 13-3-213
- booths, voting machines, or voting devices, 13-1-101, 13-13-111, 13-13-112, 13-17-101 — 13-17-103, 20-20-421
- definitions, 13-3-202

ELECTIONS (Continued)

Polling places (Continued)

- designation of, 13-3-105
- general election held with school election, 13-1-106
- instructions for electors, 13-13-112
- notice specifying, 20-20-204
- obstructions, preventing, 13-13-122
- precinct boundaries, 13-3-101 — 13-3-103
- school buildings used as, school holiday when, 20-1-305
- supplies, 13-13-101, 20-20-401
- warning notices, posting, 13-13-113
- youth voting program, Title 13, chapter 22, See Youth voting program

Poll watchers, 13-13-120, 13-13-121

Precedence of provisions, 20-20-102

Precinct

- boundaries, 13-3-101 — 13-3-103
- register book, 13-2-116, 13-13-114, 13-13-118, 13-13-119, 20-20-312

Preparation generally, Title 20, chapter 20, part 2

Primary elections

- time for holding, 13-1-107

Procedures, Title 13, chapter 13; Title 20, chapter 20, part 4

Reactivation of elector, 13-2-222

Records open to public, 13-1-109, 13-1-204

Registration

- absentee ballots, comparison, 13-13-213
- closure 13-2-301, 20-20-311
- facsimile transmission, by, 13-21-104, 13-21-207
- records, 13-2-112, 13-2-115
- residence, determination, 13-1-112
- youth voting program, Title 13, chapter 22

Rescheduling when, 20-20-108

Residence

- determination, rules for, 13-1-112
- only one residence, 13-1-113
- qualification of voter, 13-1-111
- term of, computation, 13-1-114

Resolutions for

- bond issues, 20-9-421, 20-9-422
- building reserve, 20-9-502
- calling of election generally, 20-20-201
- poll hours, polling places, and judges for, 20-20-203

Results, publication, 20-20-416

School elections, 20-20-101 — 20-20-421

Secret ballot, 13-1-102

Secretary of State, duties, 13-1-201 — 13-1-204, 13-12-201

Sites and facilities

- acquisition or disposal, 20-6-603
- approval of site, 20-6-621
- land use, cessation, 20-6-605
- leases, for, 20-6-625

Special, 13-1-101, 20-20-105

- notice, 13-1-108

Supervision, 20-20-401

Supplies, 20-20-401

Transfer registration, 13-2-511

Trustees, election of

- alternative method of election, 20-3-352
- annual, to be, 20-3-304
- appointments subject to election, 20-3-353, 20-3-354, 20-6-301, 20-6-313
- ballot, form, 20-3-306
- call for election, 20-3-306, 20-3-352
- certificate of election, 20-3-307, 20-20-416

ELECTIONS (Continued)

- Trustees, election of (Continued)
 - conduct of election, 20-3-306
 - district's classification changed, 20-3-302
 - elected by acclamation, 20-3-313
 - elementary districts, 20-3-302
 - additional positions when, 20-3-302, 20-3-341
 - consolidation, 20-3-302
 - first-class, nomination by petition, 20-3-344
 - new, creation, 20-3-302
 - held when, 20-3-304, 20-3-306, 20-3-352
 - high school districts, 20-3-302
 - additional positions when, 20-3-302, 20-3-353, 20-3-354, 20-6-313
 - alternative method of election, 20-3-352
 - county high school, operating, 20-3-356
 - nominating districts, 20-3-205, 20-3-353, 20-3-354, 20-3-356, 20-6-313
 - majority, legislative intent to elect less than, 20-3-302
 - nominating districts, establishment and purpose, 20-3-205, 20-3-353, 20-3-354, 20-3-356, 20-6-313
 - nomination for candidacy, 20-3-305, 20-3-338, 20-3-344, 20-3-356
 - petition, nomination by - when, 20-3-344
 - qualification, 20-3-307, 20-3-308, 20-3-338
 - single-member trustee districts, 20-3-336 — 20-3-338
 - vacancies, filling, 20-3-302, 20-3-308
- Voters, See Electors
- Voting machines, 13-1-101, 13-13-111, 13-13-112, 13-13-115, 13-13-203; Title 13, chapter 17; 20-20-421
- Voting rights of minorities, protection, 20-3-336, 20-3-337
- Winner, determination, 13-1-103
- Write-in candidates, declaration of intent — filing, 13-10-211, 13-15-111
- Youth voting program, 13-22-101 — 13-22-108

ELECTRONIC RECORDS AND SIGNATURES

- Acceptance and use, 2-20-105
- Confidentiality, 2-20-105
- Construction of provisions, 2-20-104
- Contracts, 2-20-104, 2-20-108
- Definitions, 2-20-103
- Exceptions, 2-20-104
- Management, 2-20-111
- Rule of law, 2-20-103
- Rules, 2-20-105, 2-20-109, 2-20-110
- Security procedure, 2-20-103, 2-20-107

ELEMENTARY SCHOOLS, 20-6-501

- Accreditation, 20-7-102, See Also ACCREDITATION
- Opening or reopening, 20-6-502
- Relocation within district, 20-6-218

EMERGENCIES

- Bids for sites, facilities, or supplies - requirements waived, 20-9-204
- Closure of schools, See EMERGENCY SCHOOL CLOSURE
- Hours in school week, reduction, 20-1-302
- Saturday, pupil instruction on, 20-1-303, 20-3-324
- School trustee meetings, effect on, 20-3-322
- Teachers, authorization to teach, See TEACHERS, Emergency authorization to teach
- Unforeseen emergency, 20-3-322, 20-9-802

EMERGENCY SCHOOL CLOSURE, 20-9-801, 20-9-802, 20-9-805, 20-9-806**EMOTIONALLY DISTURBED CHILDREN**

- Defined, 20-7-401
- Eligible child defined, 20-7-436
- Inpatient treatment, 20-7-420

ENROLLMENT

Caretaker relative, by, 20-6-601, 20-6-602
Compulsory, 20-5-102

EQUALIZATION AID, COUNTY

See also, FINANCE
Apportionment, 20-3-205, 20-9-335
BASE funding program, 20-9-306, 20-9-307
County basic tax, 20-5-324, 20-6-702, 20-9-212, 20-9-331, 20-9-333, 20-9-347, 20-10-144
Direct state aid, 20-9-306
Distribution, 20-9-346
Elementary districts, 20-9-331, 20-9-332, 20-9-335
Federal or state money in lieu of property tax, 20-9-331, 20-9-333
General fund budget, 20-9-308
High school districts, 20-9-333, 20-9-335
Reduction when, 20-1-301
Retirement systems, high school obligations — county tax, 20-9-212
Revenues for, 20-9-331, 20-9-333, 20-9-361
State advance, 20-9-212, 20-9-331, 20-9-333, 20-9-344, 20-9-346, 20-9-347
Taylor grazing act money, allocation, 20-9-331
Transportation, high school — county tax, 20-9-212
Withheld when, 20-9-344

EQUALIZATION AID, STATE

See also FINANCE; BASE FUNDING PROGRAM; BUDGETS AND BUDGET SYSTEM;
GUARANTEED TAX BASE AID
Definition, 20-9-343
Interest and income money, 20-9-341 — 20-9-343

EQUAL OPPORTUNITY IN EDUCATION, Const., X, 1; X, 7**ETHICS, CODE OF, Const., XIII, 4**

Definitions, 2-2-102
Enforcement, 2-2-144
Ethical requirements, 2-2-105
Local government officers and employees, 2-2-144
Public officers and employees, 2-2-102 — 2-2-105, 2-2-121, 2-2-131
Public trust, 2-2-103
Purpose, 2-2-101
Rules of conduct, 2-2-104, 2-2-121
Secretary of state, duties, 2-2-131

EXPULSION OF PUPILS, 20-5-201, 20-5-202**F****FINANCE**

Accountability of school district, 20-9-213
Accounting
adult basic education funds, 20-7-712
apportionment of money, 20-9-212
budget form, format, 20-9-103
building fund, 20-9-508
county basic special tax revenue, 20-9-333
county basic tax revenue, 20-9-331
county equalization aid, 20-9-361
extracurricular fund, 20-9-504
funds generally, 20-9-212, 20-9-213
guaranteed tax base aid, 20-9-368, 20-9-369
miscellaneous programs fund, 20-9-507
receipts and expenditures, 20-3-208, 20-3-325, 20-7-431, 20-9-201, 20-9-212, 20-9-213,
20-9-504
records, 20-9-203, 20-9-213; Title 2, chapter 7, part 5
school facilities, 20-9-369
special education expenditures, 20-7-431, 20-9-303

FINANCE (Continued)

Accounting (Continued)

- state equalization aid, 20-9-360
- technology acquisition fund, 20-9-533
- vocational education, secondary, 20-7-305

Accounts

- clearing accounts, 20-9-220
- end-of-year balances, disposition, 20-9-331, 20-9-333
- extracurricular fund, bank account, 20-9-504
- overdue, interest assessment, 20-9-225 — 20-9-227
- transactions, recording, 20-9-213

Accreditation, lack of - effect, 20-9-311

Acts of God

- budget amendments, 20-9-161
- closure of school, 20-9-802

Administration

- application of provisions, 20-9-201
- joint districts, 20-9-202
- supervision, 20-3-106, 20-9-201
- trustees, by, 20-3-324

Administrative rules with fiscal impact, 20-7-101

Adult basic education, 20-7-711, 20-7-712

Adult education

- budget, 20-7-705, 20-7-713
- fund, 20-3-324, 20-7-705, 20-7-713, 20-9-201, See also Funds generally
- levy requirements, 20-7-705
- tuition and fees, 20-7-704

Agency fund, nonbudgeted fund, 20-9-201, See also Funds generally

American Indian achievement gap payment, 20-9-330

ANB, See AVERAGE NUMBER BELONGING (ANB)

Annexation of districts, 20-6-422

Apportionment of money

- accounting, 20-9-212
- county equalization, 20-3-205, 20-9-335
- county superintendent of schools, by, 20-3-205
- county treasurer, 20-3-205, 20-9-121, 20-9-212
- emergency school closure, effect, 20-9-801, 20-9-806
- state equalization aid, 20-3-106, 20-3-205
- superintendent of public instruction, by, 20-3-106, 20-9-212, 20-9-335, 20-9-346
- transportation reimbursements, 20-10-145, 20-10-146
- vocational education - basis for, 20-7-301

At-risk student payment, 20-9-328

Attachment of elementary to high school districts, 20-6-702, 20-6-703

Audits, 20-3-205, 20-9-203, 20-9-213, 20-10-202; Title 2, chapter 7, part 5, See AUDITS

Average number belonging (ANB), See AVERAGE NUMBER BELONGING (ANB)

BASE aid, 20-9-306

- county taxes to support, 20-9-212
- deficiency, funding, 20-9-351
- distribution and administration, 20-2-121, 20-3-106, 20-9-346, 20-9-347
- state equalization aid, 20-9-343

BASE budget, 20-9-141, 20-9-303, 20-9-306, 20-9-308, See also BUDGETS AND BUDGET SYSTEM

- guaranteed tax base aid, 20-9-366 — 20-9-369
- levy, 20-3-324, 20-6-702, 20-9-104, 20-9-141, 20-9-306, 20-9-308
- over-BASE budget amount or levy, 20-3-324, 20-9-104, 20-9-141, 20-9-306, 20-9-308, 20-9-353
- over-BASE budget, exceptions, 20-9-308
- school facilities, 20-9-369

BASE funding program, 20-9-306, 20-9-347

- administrative rules with fiscal impact, funding, 20-7-101
- average number belonging (ANB) used to establish, 20-9-314
- budget amendments, aid for, 20-9-166
- elementary districts, county equalization, 20-9-331, See County equalization aid

FINANCE (Continued)

BASE funding program (Continued)

- elementary schools with ANB of 9 or fewer pupils, 20-9-141, 20-9-303
- high school districts, county equalization, 20-9-333, See County equalization aid
- joint districts, 20-9-305
- junior high schools, proration of amount when, 20-6-506
- K-12 districts, 20-6-702
- nonaccredited schools, 20-9-311
- opening or reopening schools, 20-6-502 — 20-6-504, 20-6-507
- out-of-district attendance agreements, reimbursements, 20-5-324
- state equalization aid, 20-9-343, 20-9-348

Basic entitlement, 20-9-306, 20-9-311, 20-9-314, 20-9-367, 20-9-368

Basic system of free quality public schools, definition, 20-9-309

Bequests, 20-6-601, 20-8-111, 20-9-601

Bids, See SITES AND FACILITIES, Contracts

Block grants

- retirement, 20-9-631
- transportation, 20-9-632

Bonded indebtedness

- boundary changes, effect, 20-6-411
- budget adoption, payment after, 20-9-133
- cessation of district, payment, 20-6-413
- consolidation of districts, effect, 20-6-414
- elementary district consolidation or annexation, 20-6-411, 20-6-414, 20-6-422, 20-6-423
- high school district consolidation or annexation, 20-6-422, 20-6-423
- limitations, 20-9-406, 20-9-471
- school facilities, state reimbursement, 20-9-370, 20-9-371

Bonds and bond issues, See BONDS AND BOND ISSUES

Budget amendments, budget board, and budget system, See BUDGETS AND BUDGET SYSTEM

Budgeted funds, See Funds generally

Building fund, 20-9-508

- bonds, sale money, 20-9-435, 20-9-508
- establishment and administration, 20-3-324
- interest credited to, when, 20-9-213, 20-9-508
- nonbudgeted fund, as, 20-9-201, 20-9-508, See also Funds generally
- property sale or disposal proceeds, deposit, 20-6-604
- vocational-technical secondary schools, money from sale or lease of district's interest, 20-9-405
- voluntary rural residential impact payments, 20-9-615

Building reserve fund

- budgeted fund, as, 20-9-201, See also Funds generally
- budgeting, tax levy, and use, 20-3-324, 20-9-503
- establishment and administration, 20-3-324
- investment of money from, 20-9-503
- purpose, authorization, and limitations, 20-9-502

Bus depreciation fund, 20-10-147

- budgeted fund, as, 20-9-201, See also Funds generally
- transfer to another fund only if bus is sold, 20-10-147

Business incubators, tax exemption - applicability, 15-24-1802

Cessation of district, cash disposition and tuition debt, 20-6-413

Claims, 20-9-209, 20-9-225 — 20-9-227

Clearing accounts, 20-9-220

Common school fund, See County school funds

Compensated absence liability fund, 20-9-512

Consolidation of districts, 20-6-423

Contracts, See SITES AND FACILITIES; TRANSPORTATION, Contracts; Individual

transportation; Private party contracts

Cooperatives, full service education, 20-7-451, 20-7-452, 20-7-455, 20-7-457

Cost sharing, junior high school operated by elementary and high school districts, 20-6-506

County equalization aid

- administration, 20-9-346
- aircraft fee in lieu of tax, 20-9-331, 20-9-333

FINANCE (Continued)

County equalization aid (Continued)

- apportionment, 20-3-205, 20-9-335
- BASE funding program, 20-9-306
- boat fees in lieu of tax, 20-9-331, 20-9-333
- camper fee in lieu of tax, 20-9-331, 20-9-333
- coal gross proceeds tax, 20-9-331, 20-9-333
- county basic tax, 15-24-1402, 15-24-1501, 15-24-1802, 15-24-1902, 15-24-2002, 20-6-702, 20-5-324, 20-6-702, 20-9-212, 20-9-331, 20-9-333, 20-9-347, 20-10-144
- direct state aid, 20-9-306
- distribution, 20-9-346
- elementary districts, 20-9-331, 20-9-332, 20-9-335
- federal or state money in lieu of property tax, 20-9-331, 20-9-333
- finances and penalties paid to county, revenue from, 20-9-331, 20-9-332
- flood control act, federal — allocation of money from, 20-9-331
- forest reserve money, federal apportionment, 20-9-331, 20-9-333
- general fund budget, 20-9-308
- high school districts, 20-9-333 — 20-9-335
- motorcycle fee in lieu of tax, 20-9-331, 20-9-333
- motor home fee in lieu of tax, 20-9-331, 20-9-333
- motor vehicle taxes, 20-9-331, 20-9-333
- off-highway vehicle fee in lieu of tax, 20-9-331, 20-9-333
- oil and natural gas production taxes, consideration in levy requirement, 20-9-331, 20-9-333
- retirement systems, high school obligations - county tax, 20-9-212
- revenues for, 20-9-331, 20-9-333, 20-9-361
- state advance, 20-9-212, 20-9-331, 20-9-333, 20-9-344, 20-9-347
- Taylor grazing act money, allocation, 20-9-331
- transportation, high school county tax, 20-9-212
- travel trailer fee in lieu of tax, 20-9-331, 20-9-333
- withheld when, 20-9-344

County high school bonds, See BONDS AND BOND ISSUES

County high school unification, transactions following, 20-6-313

County school funds

- accounting, 20-9-212
- basic county tax account, 20-5-324
- cash balance statements, 20-9-121
- common school fund
 - flood control act, federal — money from, 20-9-331
 - Taylor grazing act, money from, 20-9-331

Debt service

- bonds secured by state loans, 20-9-466
- cash, investment, 20-9-439
- obligations, payment, 20-9-440, 20-9-471, See also Debt service fund
- state equalization aid, 20-9-346

Debt service fund

- bonds, sale money, 20-9-435, 20-9-508
- boundary changes, use of fund, 20-6-411
- budget, 20-9-133, 20-9-438, See also BUDGETS AND BUDGET SYSTEM
- budgeted fund, as, 20-9-201, See also Funds, generally
- cessation of district, use of fund, 20-6-413
- consolidated districts, 20-6-414
- county high school bonds outstanding at time of unification, effect, 20-6-313
- end-of-the-year balance, reappropriation, 20-9-438
- grant or loan proceeds, 7-7-109
- interest credited to, when, 20-9-213, 20-9-503
- investment of money from, 20-9-441
- lease and rental money, deposit, 20-9-509
- legal bonded debt payments after budget adoption, 20-9-133
- levy requirements, 20-9-439, 20-9-440, 20-9-466, 20-9-506
- nonoperating budget, inclusion, 20-9-506
- nonoperating fund, balance not transferred to, 20-9-505
- operating reserve, limited, 20-9-438

FINANCE (Continued)

Debt service fund (Continued)

- payments from, 20-9-406, 20-9-440
- property sale or disposal proceeds, deposit, 20-6-604
- purpose, 20-9-440
- refunding bonds, payments, 20-9-406, 20-9-412
- remaining, disposition, 20-9-443
- school facilities, state reimbursement or advance 20-9-367, 20-9-370, 20-9-371
- special improvement district assessments, 20-9-438, 20-9-440
- state equalization aid, 20-9-346
- tuition rates, determination, 20-5-323
- vocational-technical secondary school, money from sale or lease of district's interest, 20-9-405

Definitions

- administrative school district employee, 20-9-512
- BASE funding program, 20-9-306
- bonds, forms, 20-9-408
- budget amendment, 20-9-161
- emergency school closure provisions, 20-9-802
- fund, budgeted fund, or nonbudgeted fund, 20-9-201
- guaranteed tax base aid provisions, 20-9-366
- interest and income money, 20-9-341
- interest assessment provisions, 20-9-225
- interlocal cooperative agreement provisions, 20-9-701
- school district, 20-7-305, 20-9-402
- school facility entitlement, 20-9-370
- state equalization aid, 20-9-343

Devises, 20-9-604

Direct state aid, See State aid, direct

Disbursements, See Expenditures

Donations to schools, 20-9-601

Educational impact statements, 20-1-208, 20-1-209, 20-9-407

Emergency school closure, Title 20, chapter 9, part 8, See also EMERGENCIES

Endowment fund, 20-9-604

- nonbudgeted fund, as, 20-9-201, See also Funds generally

Enterprise fund, nonbudgeted fund, 20-9-201, See also Funds generally

Entitlements

- BASE aid, 20-9-344, 20-9-346
- basic, 20-9-306, 20-9-311, 20-9-314, 20-9-367, 20-9-368
- guaranteed tax base aid, 20-9-369
- industrial arts, 20-7-306
- school facility, 20-9-366, 20-9-369, 20-9-370, 20-9-371
- state equalization aid, 20-9-801, 20-9-805
- total per-ANB, 20-6-702, 20-9-306, 20-9-314, 20-9-366 — 20-9-368
- vocational education, secondary, 20-7-306

Equalization aid, Title 20, chapter 9, part 3

- average number belonging, See AVERAGE NUMBER BELONGING (ANB)
- BASE funding program, See BASE funding program
- county, See County equalization aid
- general fund, See General fund
- general fund budget, See BUDGETS AND BUDGET SYSTEM
- guaranteed tax base aid, See Guaranteed tax base aid
- interest and income money, 20-9-341 — 20-9-343
- sustainable yield calculation, 20-9-343

Equitable funding of education required, Const., X, 1

Expenditures

- accounting, 20-3-325, 20-7-431, 20-9-201, 20-9-212, 20-9-213, 20-9-504
- adult education fund, 20-7-705
- annual report, 20-3-205
- authority, 20-9-213
- budget amendment, 20-9-163, 20-9-165
- building reserve fund, 20-9-503
- bus depreciation reserve fund, 20-10-147

FINANCE (Continued)**Expenditures (Continued)**

- clerk of the district, 20-3-325
- county superintendent of schools, 20-3-208
- debt service fund final budget expenditure amounts, 20-9-438
- documentation, 20-3-323, 20-9-207
- extracurricular fund, 20-9-504
- federal money, 20-3-106, 20-3-208, 20-9-331, 20-9-603, 20-10-201, 20-10-204
- flood control act, federal - funds, 20-9-331
- food services money, 20-10-201, 20-10-204
- industrial arts programs, 20-7-306
- interlocal cooperative agreements, 20-9-703, 20-9-704
- lease or rental agreement fund, 20-9-509
- limitations, 20-9-133
- metal mines tax reserve fund, 20-9-231
- miscellaneous programs fund, 20-9-507
- nonbudgeted funds, 20-9-201, 20-9-210
- nonoperating fund, 20-9-505
- obligations, issuance for payment, 20-9-471
- retirement fund final budget expenditure amounts, 20-9-501
- social security contributions, priority, 19-1-814
- special education, accounting, 20-7-431, 20-9-303
- traffic education fund, 20-7-507
- transportation, 20-5-323, 20-10-143 — 20-10-145
- vocational education, secondary - programs, 20-7-306

Extracurricular fund, 20-9-504

- audit of, Title 2, chapter 7, part 5, See AUDITS
- nonbudgeted fund, as, 20-9-201, See also Funds generally

Federal money

- acceptance, 20-3-106, 20-3-208, 20-9-603
- adult education, for, 20-7-705, 20-7-711
- debt service fund levy requirements, 20-9-439
- expenditure, 20-3-106, 20-3-208, 20-9-331, 20-9-603, 20-10-201, 20-10-204
- flood control, 20-9-331
- forest reserve, apportionment, 20-9-331, 20-9-333, 20-10-146
- funds for, See Building fund; Miscellaneous programs fund
- indigent children, for, 20-3-205, 20-10-205
- interlocal cooperative agreements, 20-9-703
- property tax, in lieu of, 20-9-143, 20-9-331, 20-9-333, 20-10-204, 20-10-205
- property tax reduction, availability for, 20-10-144
- school food services, for, 20-3-106, 20-3-205, 20-10-201, 20-10-204, 20-10-205
- Taylor grazing act, 20-9-331
- Title I money, 20-9-143, 20-9-507, 20-9-514, 20-10-144
- vocational education, 20-7-301, 20-7-303, 20-7-321

Fees, pupils, 20-9-214**Final budgets, See BUDGETS AND BUDGET SYSTEM****Fines and penalties, 20-9-331, 20-9-332, 20-9-435****Fiscal year, 20-1-301****Fish, wildlife, and parks - departmental funds allocated to district when, 87-1-603, 87-1-604****Flexibility fund, 20-9-542, 20-9-543****Flood Control Act, Federal - money from, 17-3-231, 17-3-232, 20-9-331****Forest reserve money, federal - apportionment, 17-3-213, 20-9-331, 20-9-333, 20-10-146****Funds generally, See also specific fund**

- accounting, 20-9-212, 20-9-213
- appropriations, See APPROPRIATIONS
- budget amendments for, See BUDGETS AND BUDGET SYSTEM
- budgeted funds, 20-9-201
 - accounting, 20-9-212
 - adult education fund, 20-7-705, 20-9-201
 - coal gross proceeds taxes, reallocation when, 15-23-703
 - enrollment increase, budget amendments, 20-9-161, 20-9-162, 20-9-165, 20-9-166
 - flexibility fund, 20-9-542, 20-9-543

FINANCE (Continued)

Funds generally (Continued)

budgeted funds (Continued)

- K-12 districts, 20-6-702
- lapse of appropriations, 20-9-209
- nonoperating fund, 20-9-201, 20-9-505
- transfer among appropriated items, 20-9-208
- tuition, calculation, 20-5-323
- warrants, 20-9-212, 20-9-213, 20-9-221

budgeting for, See BUDGETS AND BUDGET SYSTEMS

cash balances, 20-3-205, 20-6-702, 20-9-121, 20-9-201

classification, 20-9-201

clearing accounts, 20-9-220

closing, 20-9-201

compensated absence liability fund, 20-9-512

county, See County school funds

definitions, 20-9-201

end-of-the year balance, reappropriation, 20-9-438

inactive, 20-9-201

interlocal cooperative agreements, support for, 20-9-703, 20-9-704

investment by state, Const., VIII, 13

levy requirements, See specific fund; PROPERTY TAX, Levies

nonbudgeted funds, 20-9-201

- accounting, 20-9-212

- building fund, 20-9-201, 20-9-508

- expenditure, limitation, 20-9-210

- fees, pupil — deposit, 20-9-214

- impact aid fund, 20-3-324, 20-9-143, 20-9-201, 20-9-514

- interlocal cooperative agreement fund, 20-9-201, 20-9-511

- lease or rental agreement fund, 20-9-201, 20-9-509

- litigation reserve, 20-9-201, 20-9-515

- metal mines tax reserve fund, 20-9-201, 20-9-231

- miscellaneous programs fund, 20-9-201, 20-9-507

- school food services fund, 20-9-201, 20-10-207

- technology acquisition fund, 20-9-533, 20-9-534

- traffic education fund, 20-7-507, 20-9-201, 20-9-510

- tuition “add on”, 20-5-324, 20-9-141

- warrants, 20-9-221

outstanding obligations, statement of amount, 20-9-121

property sale or disposal proceeds, deposit, 20-6-604

records, See Records

revenue estimates, 20-3-205

special purpose funds, Title 20, chapter 9, part 5, See also specific fund

transfers between, when, 20-9-133, 20-9-208

General fund

average number belonging (ANB) established for, 20-3-324

BASE budget levy requirement, 20-9-141

budget, See BUDGETS AND BUDGET SYSTEM

budget amendments, state aid, 20-9-166

budgeted fund, as, 20-9-201, See also Funds generally

debt service fund money transferred to, when, 20-9-443

end-of-the-year balance, 20-9-104

fees, pupil — deposit, 20-9-214

funds, cash balances - transfer to, 20-9-201

investment of general fund cash, interest earnings, 20-9-141

joint districts, calculation, 20-9-305

judgments, payment, 2-9-316

lease and rental money, deposit, 20-9-509

levy requirement, 20-3-205, 20-9-141, 20-9-142

oil and natural gas production tax, consideration in levy requirement, 20-9-141

operating reserve, 20-3-324, 20-9-104, 20-9-505

property sale or disposal proceeds, deposit, 20-6-604

FINANCE (Continued)

General fund (Continued)

- reappropriation of balance, 20-9-104, 20-9-141
- sick leave, accumulated - fund for payment, 20-9-512
- special education expenditures, accounting, 20-7-431
- trustees' duties generally, 20-3-324
- tuition, 20-5-323, 20-5-324
- vacation leave, accumulated - fund for payment, 20-9-512
- vocational-technical secondary schools, money from sale or lease of district's interest, 20-9-405
- warrants, 20-9-104
- youth detention centers, district obligation for students, 20-9-130, 41-5-1807

Gifted and talented children programs, 20-7-903

Gifts, 20-9-604

Grants, 7-7-109, 20-6-601, 20-9-507, 20-9-508, 20-9-603, 20-9-703, See also Federal money; Public school fund

Group health and life insurance, 20-3-331

Guaranteed tax base aid

- amount, 20-9-368
- BASE aid, 20-9-306
- BASE funding program, 20-6-702
- calculation, 20-9-368, 20-9-369
- deficiency in BASE aid, 20-9-351
- definitions, 20-9-366
- distribution, 20-3-106, 20-9-344, 20-9-347, 20-9-369
- eligibility, 20-9-346, 20-9-367
- general fund budget, 20-9-308
- general fund levy requirement, calculation, 20-9-141
- records and reports, 20-9-369
- retirement fund budget, 20-6-702, 20-9-367, 20-9-368, 20-9-501
- return of excess or reversion, 20-9-368
- state equalization aid, 20-9-343
- taxable value determinations, 20-9-369

Impact aid fund, 20-3-324, 20-9-143, 20-9-201, 20-9-514

Impact aid reserve bonds, 20-9-472

Impact statements, 20-1-208, 20-1-209, 20-9-407

Indian Education for All payment, 20-9-329

Industrial arts programs, 20-7-305, 20-7-306

Industrial facility agreement for bond issues, 20-9-407

Insurance fund, restrictions, 2-9-211

Insurance settlement, 20-6-608

Interest and income money, 20-9-341 — 20-9-343

Interest assessment on overdue accounts, 20-9-225 — 20-9-227

Interlocal cooperative agreements, See also INTERLOCAL COOPERATION

- cooperating agency, 20-9-701, 20-9-704
- definitions, 20-9-701
- federal money, 20-3-106, 20-9-703, 20-9-704
- financial administration, 20-3-324, 20-9-702
- fund, 20-3-324, 20-9-201, 20-9-511, 20-9-703, 20-9-704, See also Funds generally
- prime agency, 20-9-701, 20-9-703
- self-insurance reserve fund, for, 2-9-211

Internal service fund, 20-3-331

- nonbudgeted fund, as, 20-9-201, See also Funds generally

Interstate school agreements, joint, 20-3-106, 20-9-705

Investments, Const., VIII, 13, See also LOCAL GOVERNMENT, Public funds

- accounts, investment, 20-9-235
- bond proceeds, 20-9-435, 20-9-439
- building fund money, 20-9-508
- building reserve fund money, 20-9-503
- contracts made by trustees, provisions concerning, 20-9-204
- county high school money, 7-6-2701
- debt service cash, 20-9-439
- debt service fund money, 20-9-441

FINANCE (Continued)

Investments (Continued)

- deposit in financial institutions, 7-6-201
- district money, 7-6-2701, 20-9-212, 20-9-213
- endowment fund money, 20-9-604
- general fund cash, interest earnings, 20-9-141
- land commissioners, board of - funds held by, 20-9-341
- metal mines tax reserve fund, 20-9-231
- permissible investments
 - duties of trustees, 20-9-213
 - eligible securities, 7-6-202
 - interest, crediting, 7-6-204, 20-9-213
 - repurchase agreements - limitations, 7-6-202, 7-6-205, 7-6-213
- public school fund, 20-9-341; Const., VIII, 13
- state, by, Const., VIII, 13
- tax and revenue anticipation note proceeds, 7-6-1102
- transportation fund cash, 20-10-144

Isolated schools, 20-3-106, 20-3-205, 20-3-324, 20-9-302, 20-9-303

Joint districts

- administration, 20-9-202
- annual reports, 20-9-213
- budget procedures, 20-9-151
- direct state aid, proration and calculation, 20-9-305
- levy requirements, 20-3-106, 20-9-151, 20-9-152
- property valuation statements, 20-9-122
- retirement fund levy requirements, 20-9-501
- revenue received for, accounting, 20-9-212

Joint interstate school agreements, 20-9-705

Judgments, payment, 2-9-316, 20-9-161, 20-9-403, 20-9-435, 20-9-471

K-12 districts required, exception, 20-6-701

Lease or rental agreement fund, 20-9-509

establishment and administration, 20-3-324

nonbudgeted fund, as, 20-9-201, 20-9-509, See also Funds generally

Legacies, 20-9-604

Levies, See PROPERTY TAX

Liability insurance, 20-3-331

Litigation reserve fund, 20-9-515

general fund limits, 20-9-515

nonbudgeted fund, as, 20-9-201

Loans

long-term, replacement of property, 20-6-640

Maximum general fund budget, 20-6-603, 20-9-141, 20-9-163, 20-9-306, 20-9-308, 20-9-353, See

also General fund budget

Metal mines license tax revenue, 15-37-117, 20-9-231

Metal mines tax reserve fund, 15-37-117, 20-9-231

nonbudgeted fund, as, 20-9-201, 20-9-231, See also Funds generally

Mineral impact account, 17-3-241

Miscellaneous federal programs fund, 20-3-324, 20-9-703, 20-9-704

Miscellaneous programs fund, 20-9-507

adult education program money, deposit, 20-7-705

cooperatives, full service education - establishment, 20-7-457

industrial arts programs, deposit for, 20-7-306

nonbudgeted fund, as, 20-9-201, 20-9-507, See also Funds generally

nonoperating fund balance not transferred to, 20-9-505

special education, 20-7-435

tuition, unanticipated receipts - deposit, 20-5-324, 20-9-141

vocational education, secondary - deposit for, 20-7-306

New duties, financing, 1-2-113, 20-7-101

Nonbudgeted funds, See Funds generally

Nonoperating fund

budgeted fund, as, 20-9-201, See also Funds generally

budgeting and levy requirement, 20-3-324, 20-9-506

FINANCE (Continued)

Nonoperating fund (Continued)

- establishment and administration, 20-3-324
- operating reserve, 20-9-505
- purpose and establishment, 20-9-505

Notes

- self-insurance reserve fund, to fund, 2-9-211
- tax and revenue anticipation, issuance and sale, 7-7-109, 20-9-212; Title 7, chapter 6, part 11

Obligations - sale, issuance, and limitation, 20-9-471; Title 7, chapter 6, part 11

Operating reserve

- adult education fund, 20-7-713
- budget amendment, calculation, 20-9-165
- debt service fund, 20-9-438, 20-9-439
- general fund, 20-3-324, 20-9-104, 20-9-505
- nonoperating fund, 20-9-505
- retirement fund, 20-9-501
- transportation fund, 20-10-144, 20-10-146

Overdue accounts, interest assessment, 20-9-225 — 20-9-227

Personal property

- ordered but not paid for, recording, 20-9-209
- tax revenue reduction, reimbursement, 15-1-111

Private schools, public money to prohibited, Const., V, 11; X, 6

Property, disposal proceeds, 20-6-604

Property tax, See PROPERTY TAX

Public Employees' Retirement System

- retirement fund to pay employer's contributions, 20-9-501
- special education allowable costs, 20-7-431, 20-7-435

Public school fund, 20-9-601; Const., X, 2

- escheated property proceeds, deposit to, Const., X, 2
- farm mortgage lands, title vested in, 20-9-602
- income allocation, Const., X, 5
- investment, 20-9-341; Const., VIII, 13
- inviolable, Const., X, 3
- revenue credited to, 20-9-341
- unclaimed property, proceeds from sale, Const., X, 2

Quality educator payment, 20-9-327

Reappropriation

- debt service fund balance, 20-9-438
- general fund balance, 20-9-104, 20-9-141
- retirement fund balance, 20-9-501
- transportation fund balance, 20-10-144, 20-10-146

Receipts

- accounting, 20-3-325, 20-9-201, 20-9-212, 20-9-213, 20-9-504
- clerk of the district, 20-3-325
- county superintendent of schools, 20-3-208

Records

- accounting, 20-3-325, 20-9-203, 20-9-213, 20-9-221; Title 2, chapter 7, part 5
- appropriation items, entries of transfers among, 20-9-208
- audits, 20-3-205, 20-9-203, 20-9-213, 20-10-202; Title 2, chapter 7, part 5, See also AUDITS
- bond registration, 20-9-442
- clearing accounts, 20-9-220
- destruction allowed when, 20-9-215
- food service commodity, 20-10-202
- guaranteed tax base aid, 20-9-369
- public availability, 20-9-213
- state equalization aid, 20-9-346

Reports

- annual, 20-3-205, 20-3-209, 20-9-211, 20-9-213
- audit, filing, 20-3-205, 20-9-203; Title 2, chapter 7, part 5, See also AUDITS
- BASE aid payments, 20-9-347
- bond issues, validity, 20-9-462, 20-9-463
- bus depreciation reserve fund revenue requirement, 20-10-147

FINANCE (Continued)

Reports (Continued)

- cash balances and bond information, 20-9-121
- county treasurer, by, 20-9-212
- endowment fund, 20-9-604
- failure to make, 20-9-344
- final budget, 20-9-133
- financial, Title 2, chapter 7, part 5, See AUDITS
- finances imposed and collected, concerning, 20-9-332
- fiscal activities, 20-9-213
- fund, 20-9-212, 20-9-213
- guaranteed tax base aid, 20-9-369
- levy requirements
 - adult education, 20-7-705
 - building reserve fund, 20-9-503
 - debt service fund, 20-9-439
 - general fund, 20-9-141
 - nonoperating fund, 20-9-506
 - retirement fund, 20-9-501
 - transportation fund, 20-10-144
- public education, board of - required by, 20-9-344
- school food services, 20-10-201, 20-10-202
- school trustees, by 20-3-106, 20-7-306, 20-9-213
- special education allowable cost payments, 20-9-347
- state equalization aid, 20-9-346
- transportation fund, 20-10-143, 20-10-144

Retirement fund

- aircraft fee in lieu of tax, consideration in levy requirement, 20-9-501
- block grants, 20-9-631
- boat fees in lieu of tax, consideration in levy computation, 20-9-501
- budget, See BUDGETS AND BUDGET SYSTEM
- budgeted fund, as, 20-9-201, See also Funds generally
- camper fee in lieu of tax, consideration in levy requirement, 20-9-501
- coal gross proceeds tax, consideration, 20-9-501
- cooperatives, full service education - establishment, 20-7-457
- general provisions, 20-3-324, 20-9-501
- levy requirements, 20-9-501
- motor home fee in lieu of tax, consideration in levy requirement, 20-9-501
- motor vehicle taxes, consideration in levy requirement, 20-9-501
- off-highway vehicle fee in lieu of tax, consideration in levy computation, 20-9-501
- oil and natural gas production tax, consideration in levy requirement, 20-9-501
- operating reserve, 20-9-501
- reappropriation, 20-9-501
- social security, Title 19, chapter 1, See SOCIAL SECURITY
- system funding, 19-2-409
- teachers' retirement, Title 19, chapter 20, See RETIREMENT, Teachers' Retirement System
- travel trailer fee in lieu of tax, consideration in levy requirement, 20-9-501
- tuition rates, determination, 20-5-323
- warrants, 20-9-501

Revenue and tax anticipation notes, issuance and sale, 7-7-109, 20-9-212; Title 7, chapter 6, part 11

Rules with fiscal impact, 20-7-101

School facility entitlement, 20-9-366, 20-9-369, 20-9-370, 20-9-371

state advance or reimbursement, 20-9-343, 20-9-346, 20-9-439, 20-9-370, 20-9-371

School food services fund

- administration, 20-3-324, 20-10-207
- establishment, 20-3-324, 20-10-204, 20-10-207
- federal funds allocated to, when, 20-10-201, 20-10-205
- nonbudgeted fund, as, 20-9-201, 20-10-207, See also Funds generally

School lands, See PROPERTY; SCHOOL LANDS

Sectarian schools, public funds prohibited, Const., V, 11; X, 6

Self-insurance plan, 20-3-331

FINANCE (Continued)

- Self-insurance reserve fund, funding, restrictions, 2-9-211
- Short-term obligations, Title 7, chapter 6, part 11
- Sick leave, accumulated - fund for payment, 20-9-512
- Social security
 - contributions, 19-1-814, 20-9-501
 - special education allowable costs, 20-7-431, 20-7-435
- Special education, See SPECIAL EDUCATION
- Special improvement district assessments, 20-9-406, 20-9-438, 20-9-440
- Special purpose funds, Title 20, chapter 9, part 5, See also specific fund
- State aid, direct, 20-9-306
 - budget amendments, for, 20-3-106
 - building maintenance, 20-9-375
 - county equalization money, apportionment, 20-9-335
 - distribution, 20-9-344
 - elementary schools with ANB of 9 or fewer pupils, 20-9-303
 - general fund levy, computation, 20-9-141
 - guaranteed tax base aid, 20-9-366 — 20-9-369
 - joint districts, proration and calculation, 20-9-305
 - school facilities, 20-9-369
 - technology, 20-9-375
 - vocational education, secondary — ANB calculation, 20-7-306
- State aid generally
 - budget amendments, 20-9-166
- State equalization aid, 20-9-343
 - administration, 20-9-346
 - apportionment, 20-3-106, 20-3-205
 - emergency school closure, effect, 20-9-805
 - appropriations, 20-9-361
 - BASE funding program, 20-9-306
 - direct state aid, 20-9-306
 - distribution, 20-3-106, 20-9-346
 - entitlement, 20-9-346
 - estimation, 20-9-348
 - general fund budget, 20-9-308
 - payments, 20-9-347
 - preschool programs, nonapplicability, 20-7-117
 - purpose, 20-9-344
 - records, 20-9-346
 - reduction when, 20-1-301
 - reports pertaining to, 20-9-346
 - school facilities, state advance or reimbursement, 20-9-370
 - telecommunications network (METNET), 20-9-343
- State equalization aid levy, 20-9-360
- State funds, remission, 1-2-113
- State mandates to districts, 1-2-113
- Statutes imposing new duties, means of financing, 1-2-113
- Systemic initiative for Montana mathematics and science grant, 20-9-343
- Tax and revenue anticipation notes, issuance and sale, 7-7-109, 20-9-212; Title 7, chapter 6, part 11
- Taxation, See PROPERTY TAX
- Tax increment financing, 20-9-360, 20-9-361
- Tax protests
 - general fund operating reserve limitations, effect of unused balance of settlements, 20-9-104
 - lost, bond issues for repayment, 2-9-316, 20-9-403, 20-9-406, 20-9-421, 20-9-435
 - settlements, budget amendments for expenditure, 20-9-161
- Tax receipts from audits or delinquent taxes, budget amendment for expenditure, 20-9-161
- Taylor Grazing Act, money from, 17-3-222, 20-9-331
- Teachers' Retirement System
 - retirement fund to pay employer's contributions, 20-9-501
 - special education allowable costs, 20-7-431, 20-7-435

FINANCE (Continued)

- Technology acquisition fund, 20-9-375
 - establishment, 20-9-533
 - state superintendent allocation, 20-9-534
- Tort claims, judgment liability, 2-9-316
- Traffic education fund, 20-9-510, 61-2-103
 - establishment and administration, 20-3-324
 - nonbudgeted fund, as, 20-7-507, 20-9-201, 20-9-510, See also Funds generally
- Transportation fund
 - aircraft fee in lieu of tax, consideration in levy requirement, 20-10-144, 20-10-146
 - block grants, 20-9-632
 - boat fees in lieu of tax, consideration in levy requirement, 20-10-144, 20-10-146
 - budget, See BUDGETS AND BUDGET SYSTEM
 - budget amendments, state aid, 20-9-166
 - budgeted fund, as, 20-9-201, See also Funds generally
 - camper fee in lieu of tax, consideration in levy requirement, 20-10-144, 20-10-146
 - cash, reappropriation and reserve, 20-10-144
 - coal gross proceeds tax, consideration, 20-10-144, 20-10-146
 - cooperatives, full service education - establishment, 20-7-457
 - end-of-the-year balance, 20-10-144, 20-10-146
 - federal forest reserve money, apportionment, 20-10-146
 - federal money, consideration in levy requirement, 20-10-144
 - ineligible transportees' payments, deposit, 20-10-122
 - levy requirements, 20-10-144, 20-10-146
 - motor home fee in lieu of tax, consideration in levy requirement, 20-10-144, 20-10-146
 - motor vehicle taxes, consideration in levy requirement, 20-10-144, 20-10-146
 - nonpublic school children's payments, deposit, 20-10-123
 - off-highway vehicle fee in lieu of tax, consideration in levy requirement, 20-10-144, 20-10-146
 - oil and natural gas production tax, consideration in levy requirement, 20-10-144, 20-10-146
 - operating reserve, 20-10-144
 - out-of-district attendance obligations, 20-5-323, 20-5-324
 - reappropriation of fund balance, 20-10-144, 20-10-146
 - transportation payments from other districts and parents, consideration in levy requirements, 20-10-144
 - travel trailer fee in lieu of tax, consideration in levy requirement, 20-10-144, 20-10-146
 - warrants, 20-10-144, 20-10-146
- Trustees, duties generally, 20-3-324, 20-9-213
- Tuition, See TUITION
- Unemployment insurance
 - retirement fund to pay employer's contributions, 20-9-501
 - special education allowable costs, 20-7-431, 20-7-435
- Urban renewal tax increment financing, 20-9-360, 20-9-361
- Vacation leave, accumulated - fund for payment, 20-9-512
- Vocational education
 - federal funds, 20-7-301, 20-7-303, 20-7-321
 - state money, 20-7-305, 20-7-306
- Vocational-technical secondary schools, 20-9-404, 20-9-405
- Warrants, See WARRANTS
- Youth, community-based services - funding and services, 41-3-1132
- Youth detention centers, 20-9-130, 41-5-1807

FIRE DRILLS, see DISASTER DRILLS**FIRE PROCEDURES, 20-1-405****FIRE SAFETY IN PUBLIC BUILDINGS**

- Administration of provisions, 50-61-102
- Applicability of provisions, 50-61-103
- Enforcement, 50-61-102, 50-61-114
- Fire exits - obstruction unlawful, 50-61-106
- Inspections, 50-61-101, 50-61-114
 - local enforcement, program for, 50-61-102
 - university system buildings, 50-3-102
- Purpose of provisions, 50-61-101

FIRE SAFETY IN PUBLIC BUILDINGS (Continued)

Smokeless powder and small arms primers, storage restrictions, 50-61-120, 50-61-121
Violations, 50-61-115 — 50-61-119

FIREARMS

Carrying in prohibited place, 45-8-328, 45-8-351, 45-8-361
Use by children under age 14 prohibited, 45-8-344, 45-8-345
Safety education, 20-7-132
Suspension or expulsion, 20-5-202

FISCAL YEAR

Public employees' retirement, 19-2-303
School, 20-1-301

FIVE-YEAR-OLD SCHOOLING, 20-1-101, 20-7-117, 20-7-411**FLAG, AMERICAN**

Display, 20-3-324
Pledge Requirement, 20-7-133

FOOD SERVICES, 20-10-201

Administrative review, audits and inspections, 20-3-106, 20-10-202
Commodities, 20-3-106, 20-10-202 — 20-10-204
Establishment, operation, and expansion, 20-10-201, 20-10-204
Federal funds, 20-3-106, 20-10-201, 20-10-205
Fund, See FINANCE, School food services fund
Gifts for, 20-10-201, 20-10-204
Indigent children, 20-3-205, 20-10-205
Institutional schools, inclusion, 20-10-206
Personnel, 20-3-324
Records and reports, 20-3-106, 20-10-202
Wild animal meat donated to, when, 87-1-226

FREE EDUCATION, Const., X, 1**G****GENERAL EDUCATION DEVELOPMENT (GED)**, 20-7-131**GIFTED AND TALENTED CHILDREN**, 20-2-121, 20-7-901, 20-7-903**GOVERNMENT ACCOUNTABILITY ACT**, 2-11-101 — 2-11-104**GOVERNMENTAL INTERNET INFORMATION PRIVACY ACT**, 2-17-550 — 2-17-553**GUARANTEED TAX BASE AID (GTBA)**

See FINANCE; SCHOOL FACILITIES ADVANCES AND REIMBURSEMENTS

Amount, 20-9-368
BASE aid, 20-9-306
BASE funding program, 20-6-702
Calculation, 20-9-368, 20-9-369
Deficiency in BASE aid, 20-9-351
Definitions, 20-9-366
Distribution, 20-3-106, 20-9-344, 20-9-347, 20-9-369
Eligibility, 20-9-346, 20-9-367
General fund budget, 20-9-308
General fund levy requirement, calculation, 20-9-141
Records and reports, 20-9-369
Retirement fund budget, 20-6-702, 20-9-367, 20-9-368, 20-9-501
Return of excess or reversion, 20-9-368
School facilities, state advance or reimbursement, 20-9-370
State equalization aid, 20-9-343
Taxable value determinations, 20-9-369

H**HAZARDOUS CHEMICAL INFORMATION**

- Applicability and exemptions, 50-78-103
- Citation of Employee and Community Hazardous Chemical Information Act, 50-78-101
- Definitions, 50-78-102
- Employee rights, 50-78-204, 50-78-306
- Information program, 50-78-306
- OSHA standard, 50-78-102, 50-78-204
 - relationship to, 50-78-104

HEALTH

- Education, drug and alcohol instruction, 20-25-601 — 20-25-604
- Immunization, Title 20, chapter 5, part 4, See IMMUNIZATION REQUIREMENTS
- Inspections, 50-1-202, 50-1-203
- Programs, 50-1-202
- Pupils, conditions and records, 20-3-324
- Quarantine measures, 50-1-204
- Regulations, 50-1-206
- State health plan, 50-1-201

HEARINGS, See ADMINISTRATIVE PROCEDURE, Contested cases

HIGH SCHOOLS, 20-6-501

- See also COUNTY HIGH SCHOOLS; JUNIOR HIGH SCHOOLS
- Accreditation, 20-7-102, See ACCREDITATION
- Opening or reopening, 20-6-503

HISTORICAL SOCIETY, 2-15-1511**HOLIDAYS**

- Enumeration, 1-1-216, 20-1-305, 20-1-307
- Teachers or specialists, teaching on, 20-4-201

HOME SCHOOLS, 20-5-102, 20-5-109, 20-5-111

- See also PRIVATE SCHOOLS

HOME STUDY, Supervised, 20-5-102, 20-7-116, 20-10-121, 20-10-125, 20-10-142, 20-10-144

HOMELESS CHILDREN, Admittance, 20-5-101

I**IMMUNIZATION REQUIREMENTS**, 20-5-403

- Affidavit, 20-5-405
- Attendance, commencement, 20-5-403, 20-5-404, 20-5-408
- Definitions, 20-5-402
- Enforcement, 20-5-408, 20-5-410
- Evidence, 20-5-403, 20-5-406, 20-5-409
- Exemptions, 20-5-403, 20-5-405, 20-5-409, 52-2-735
- Failure to comply, 20-5-405, 20-5-409, 20-5-410
- Forms, 20-5-405, 20-5-406, 20-5-408
- Home schools, 20-5-109, 20-5-111
- Immunizing agents, approval, 20-5-403, 20-5-409
- Injunction, 20-5-409
- Noncompliance, 20-5-409, 20-5-410
- Nonpublic schools, records, 20-5-109
- Penalty, 20-5-410
- Postsecondary schools, 20-5-402, 20-5-403, 20-5-408
- Records, 20-5-109, 20-5-403, 20-5-405, 20-5-406
- Reports, 20-5-408
- Rulemaking, 20-5-407
- Transfer students, records, 20-5-403

INDIAN EDUCATION FOR ALL, Act, 20-1-501 — 20-1-503

- Funding, 20-9-306, 20-9-329

INDIANS

- Children, attendance, 20-5-108
- Commemorative days, 20-1-306
- Culture, preservation, Const., X, 1, See TEACHERS, Indian studies
- Deaf and Blind, Montana School for - admission, 20-8-107
- Educational goals, cooperation when implementing, 20-1-501
- Jurisdiction of state, 2-1-301 - 2-1-303, 2-1-306, 2-1-307
- State-tribal cooperative agreements
 - accounts, 18-11-112
 - authorization, 18-11-103
 - citation of state-tribal cooperative agreements act, 18-11-101
 - contents, 18-11-103, 18-11-104
 - definitions, 18-11-102
 - filing, 18-11-107
 - funds, materials, personnel, and services, 18-11-109
 - limitations, 18-11-110
 - revenue, distribution, 18-11-112
 - revocation, 18-11-108
 - submission to attorney general, 18-11-105

INDIGENT CHILDREN, 20-3-205, 20-5-101, 20-5-107, 20-10-205

INDUSTRIAL ARTS PROGRAMS, Funding, 20-7-305, 20-7-306

INSURANCE

- Buses, 20-3-331, 20-10-107, 20-10-109, 20-10-124, 20-10-143
- District employees' group insurance, 20-3-331, See also Group benefits
- Government
 - judgments, payment, 2-9-316
 - legislative acts and omissions, immunity — purchase does not waive, 2-9-111
 - policy conditions, construction, 2-9-306
 - political subdivisions, 2-9-211, 2-9-212
 - reserve funds, 2-9-202, 2-9-211, 2-9-212
 - claims paid from, 2-9-303, 2-9-304
 - self-insurance, 2-9-111, 2-9-202, 2-9-211
 - state plan, 2-9-201, 2-9-202
 - tax levy for premiums, 2-9-212
- Group benefits for public officers and employees
 - advisory council, 19-50-101
 - retirement benefits, premiums withheld, 19-2-904
- Insurance fund, 2-9-211
- Liability, requirements, 20-3-331, 20-10-109, 20-10-124
- Property, requirements, 20-6-608
- Self-insurance plan, 2-9-111, 2-9-202, 2-9-211, 20-3-331
- Special education, proration, 20-7-435
- Transportation requirements, 20-10-107, 20-10-109, 20-10-124, 20-10-143
- Unemployment insurance
 - retirement fund to pay employer's contributions, 20-9-501
 - special education allowable costs, 20-7-431, 20-7-435

INTERLOCAL COOPERATION, Const., XI, 7

- Agreements
 - contents, 7-11-105
 - creation, authorization, 7-11-104
 - filing, 7-11-107
 - funding, 7-11-108
 - self-insurance reserve fund, for, 2-9-211
- Bonds to construct joint facility, 7-11-104, 20-9-404, 20-9-405
- Citation of Interlocal Cooperation Act, 7-11-101
- Definition, 7-11-103
- Education cooperatives, 20-7-451, 20-7-452, 20-7-454
- Purpose of provisions, 7-11-102
- State-tribal cooperative agreements, Title 18, chapter 11, part 1, See INDIANS

INTERNET

Government competition with private providers prohibited 2-17-601 — 2-17-604
Privacy, See GOVERNMENTAL INTERNET INFORMATION PRIVACY ACT

ISOLATED SCHOOLS, 20-3-106, 20-3-205, 20-3-324, 20-9-302, 20-9-303

J**JUNIOR HIGH SCHOOLS**, 20-6-501

See also COUNTY HIGH SCHOOLS; HIGH SCHOOLS
Accreditation, 20-7-102, See ACCREDITATION
Closure, 20-6-505, 20-6-509
Opening, 20-6-504 - 20-6-506

K**K-12 SCHOOL DISTRICTS**, 20-6-701

ANB, 20-6-702
Attachment of elementary to high school district, 20-6-101, 20-6-701, 20-6-703
Bonded indebtedness, 20-9-406
Dissolution, 20-6-701, 20-6-704
Funding and funds, 20-6-702, 20-6-703
Hiring preference, 20-6-711
Number of trustees, 20-6-702
Property, 20-6-703
Records, 20-6-703
Tenure protection, 20-6-711
Transitions after formation, 20-6-703
Trustees, 20-6-702
When Required, 20-6-701

KINDERGARTENS, 20-7-117

See also PRESCHOOL PROGRAMS
Hours of instruction, 20-1-301, 20-1-302
Immunization requirements, Title 20, chapter 5, part 4, See IMMUNIZATION REQUIREMENTS
Out-of-district attendance agreements, 20-5-320, 20-5-321

L**LEASE OF BUILDINGS OR LAND**

See PROPERTY; SITES AND FACILITIES

LEASE-PURCHASE AGREEMENTS, 20-6-609**LIBRARIANS**, 20-4-131**LIBRARIES**

Bible or other religious material, inclusion, 20-7-112
Books, selection, 20-3-205, 20-4-402, 20-7-204
Establishment and maintenance, 20-7-202
Interlibrary loan reimbursement, 22-1-328
Montana State Library
 natural resource information system, representation on ground water assessment steering committee, 2-15-1523
Operational policies, 20-7-203
Policies regarding, 20-7-203
Records confidentiality, 22-1-1101 — 22-1-1103, 22-1-1111
Reports concerning, 20-7-205
Requirements, 20-7-202
Services, contracts and cooperation for, 22-1-312
State Library Commission
 allocation, 2-15-1511
 board of trustees, 2-15-1511
 budget requests, 2-15-1511

LIBRARIES (Continued)

State Library Commission (Continued)

- composition, appointment, terms, and compensation, 2-15-1514
- interlibrary loan reimbursements, rules for, 22-1-328

State visual, aural, and other educational media library, 20-2-121, 20-3-106, 20-7-201

Use policies, 20-7-203

LOCAL GOVERNMENT

Bonds and bond issues, See BONDS AND BOND ISSUES

Contracts, 52-2-617

Drinking and driving prevention programs, 61-2-106 — 61-2-108

Firearms, restriction on regulation, 45-8-351, 45-8-361

Interlocal cooperation, Title 7, chapter 11, part 1, See INTERLOCAL COOPERATION

Notes, tax and revenue anticipation

- authorization, 7-6-1102, 7-6-1116
- debt limitations, nonapplicability, 7-6-1115
- definitions, 7-6-1101
- issuance and sale, 7-6-1102, 7-6-1103, 7-7-109
- principal and interest, 7-6-1102, 7-6-1112
- refunding and renewal, 7-6-1105
- security, 7-6-1111

Property

- transfer between governmental entities, 7-8-101

Public funds

- deposit in financial institutions, 7-6-201, 7-6-203 — 7-6-208, 7-6-211, 7-6-212
- investment, 7-6-202, , 7-6-204, 7-6-206, 20-9-213
- repurchase agreements - limitations, 7-6-202, 7-6-205, 7-6-213

Recreation programs, See RECREATION PROGRAMS

Retirement, contracting employer, Title 19, chapter 3, See RETIREMENT, Public Employees'

Retirement System

M

MEDIATION, 26-1-813

MIDDLE SCHOOLS, 20-6-501

See also ELEMENTARY SCHOOLS

Accreditation, 20-7-102, See ACCREDITATION

Opening, 20-6-507

MILITARY

Military service employment rights, 10-1-1001 — 10-1-1027

Recruiters, access to records, 20-7-134

MINIMUM AGGREGATE HOURS, 20-1-301

MISSING CHILDREN, 44-2-501 — 44-1-511

Absence from school, notice to parents, 44-2-507

Enrollment procedures to aid identification, 44-2-511

List of missing school children, 44-2-503, 44-2-506

MONTANA EDUCATIONAL TELECOMMUNICATIONS NETWORK, 20-32-101 — 20-32-104

MONTANA SUMMER YOUTH EMPLOYMENT PROGRAM, 39-10-201 — 39-10-206

MOTOR VEHICLES

Buses, See TRANSPORTATION

Crossing guards, 20-3-106, 61-8-502

Driver education, See TRAFFIC EDUCATION

School children, driving through - unlawful, 61-8-502

Speed limits near schools, alteration, 61-8-310

Traffic education, Title 20, chapter 7, part 5, See TRAFFIC EDUCATION

Traffic safety program, Title 61, chapter 2, part 1, See TRAFFIC SAFETY PROGRAM

MULTIJURISDICTIONAL SERVICE DISTRICTS, Title 7, chapter 1, part 11

MUSIC INSTRUCTION, Private, 20-7-115

N

NATIVE AMERICANS, SEE INDIANS

NEPOTISM

- Affinity, relationship by, 1-1-219
- Appointment of relatives, 2-2-302, 2-2-303
- Defined, 2-2-301
- Discrimination laws, exemption when provisions conflict, 49-2-303, 49-2-403, 49-3-201
- Penalty for violations, 2-2-304

NONPUBLIC NONACCREDITED SCHOOL, Placement of child in public school, assessment policy, 20-3-324, 20-5-110

NOTICE

- Mail notice, Local Government, 7-1-2122
- Publication and content, Local Government, 7-1-2121

NURSES

- Child abuse and neglect, reporting, 41-3-201
- Employment, 20-3-324
- Privileged communications, 26-1-801, 26-1-809, 41-3-201
- Special education, allowable costs, 20-7-431
- Teachers' Retirement System, membership, 19-20-302, See RETIREMENT, Teachers' Retirement System

NURSING, 37-8-101 — 37-8-103

- Definitions, 37-8-102
- Exemptions, 37-8-103

NUTRITIONISTS, 37-25-302

O

OATHS, 2-16-211, 2-16-212; Const., III, 3

- Deputies, 2-16-302
- Failure to file, 2-16-501
- Violation, 2-16-603

OCCUPATIONAL THERAPISTS, 37-24-301

OPENING OR REOPENING SCHOOLS, 20-3-324

- Elementary schools, 20-3-106, 20-3-205, 20-6-218, 20-6-502
- High schools, 20-3-106, 20-3-205, 20-6-503
- Junior high schools, 20-3-106, 20-3-205, 20-3-362, 20-6-504 — 20-6-506
- Middle schools, 20-6-507

OPEN MEETINGS, Const., II, 9

See also PUBLIC PARTICIPATION IN GOVERNMENT

- Assembly, freedom of, Const., II, 6
- Committees or subcommittees, requirements, 2-3-203
- Constitutional provision, enforcement — costs to plaintiff, 2-3-221
- Construction of provisions, 2-3-201
- Exceptions, 2-3-203
- Legislative intent, 2-3-201
- “Meeting” defined, 2-3-202
- Minutes, public availability, 2-3-212
- Press representatives, 2-3-211
- Public agencies and associations of agencies, requirements, 2-3-203
- Recording, 2-3-211
- Right to know, Const., II, 9
- School district architectural services, tentative and final proposals, 20-6-634
- School meetings, disturbing or disrupting, 20-1-206
- School trustees, 20-3-322, 20-9-165, 20-10-125
- Voidability of decisions made in violation of law, 2-3-213
- Youth Placement Committee meetings, nonapplicability, 41-5-125

P

PARENT-CHILD LEGAL RELATIONSHIP TERMINATION, Title 41, chapter 3, part 6
See CHILD ABUSE AND NEGLECT

PARENT-TEACHER CONFERENCES, 20-1-304

PAROCHIAL SCHOOLS, See PRIVATE SCHOOLS

PEST AND PESTICIDE MANAGEMENT SAFETY PROGRAM, 80-8-404

Citation of Model School Integrated Pest and Pesticide Management Safety Program Act, 80-8-401

Definitions, 80-8-403

Policymaking authority, 80-8-405

Policy, statement of, 80-8-402

PHYSICAL THERAPISTS, 37-11-301

P.I.R. DAYS, 20-1-304, 20-2-121

PLAYGROUNDS, See DISTRICTS AND TRUSTEES, Public recreation programs

PLEDGE OF ALLEGIANCE, 20-7-133

PRESCHOOL PROGRAMS, 20-7-117, 20-7-411

See also KINDERGARTENS

Elementary schools, inclusion, 20-6-501, 20-7-117

Hours of instruction, 20-1-301

Immunization requirements, Title 20, chapter 5, part 4, See IMMUNIZATION REQUIREMENTS

Special education, 20-7-411

PREVAILING WAGE RATES, 18-2-401 — 18-2-404, 18-2-422

PRINCIPALS, 20-1-101

See also TEACHERS, generally

Certification, See TEACHERS, Certification

County high schools, 20-3-324, 20-4-401, 20-4-402

District superintendent, duties as through when, 20-4-403

Employment or dismissal, 20-3-324, 20-6-410

Fines for violations, 20-1-203

K-12 districts, 20-6-711

Library books, selection, 20-7-204

Misappropriation of funds, 20-1-203

Prayer to open school day, 20-7-112

Pupils

authority, 20-4-302, 20-5-201

suspension, 20-4-302, 20-4-403, 20-5-202

truancy or incorrigibility, 20-4-302

Retirement, Title 19, chapter 20, See RETIREMENT, Teachers' Retirement System

Special education assistance, 20-7-403

Successor, delivering materials to, 20-1-203

Teachers, duties, 20-3-324, 20-4-204, 20-4-207, 20-4-301

Textbooks selected by, 20-7-602

PRIVATE SCHOOLS

Accreditation, 20-7-102

Coaches, nonfaculty, 20-1-210

Community service corps and volunteer projects, Title 90, chapter 14, part 1, See COMMUNITY SERVICE

Compulsory enrollment exemption, 20-5-102, 20-5-109, 20-5-111

Federal money, distribution, 20-9-603

Interscholastic competition, 20-1-210

New students, school records and proof of identity — requirements, 44-2-511

Nonaccredited, placement of child in public school - district assessment, 20-3-324, 20-5-110

Retirement for employees, Title 19, chapter 20, See RETIREMENT, Teachers' Retirement System

School bus transportation, public, 20-10-123

School food commodities, distribution contracts, 20-10-203

State aid prohibited, Const., V, 11; X, 6

PROCUREMENT, 18-4-121 — 18-4-123, 18-4-132

- Competition, 18-4-234
- Cooperative purchasing, 18-4-401 — 18-4-407
- Donate property to a school district, authority to, 20-6-101
- Exceptions to bidding requirements, 20-9-204
- Exemptions, 18-4-133
- Local government, 18-4-124
- Procedure, 18-4-301 — 18-4-314
- Records, 18-4-125 — 18-4-126
- Specification, 18-4-231 — 18-4-234
- Unlawful solicitation, 18-4-242
- Vendors, 18-4-141, 18-4-241

PROPERTY

See also **SITES AND FACILITIES; SCHOOL LANDS**

- Appeals concerning sale or disposal, 20-6-604
- Boundary changes, disposition, 20-6-417
- Cooperatives, full service education, 20-7-452
- Deed, conditional - acquired by, repossession, 20-6-605
- Destruction
 - loans, long-term - for replacement, 20-6-640
 - minors, by parental liability, 20-5-201, 40-6-237
 - unexpected, budgeting for, See **BUDGETS AND BUDGET SYSTEM**, Budget amendments
- Drugs, dangerous - criminal sale on or near, 45-9-109
- Gifts or grants, acceptance, 20-6-601, 20-9-604
- Historical writings - display, 1-1-520
- Income, disposition, Const., X, 5
- Insurance requirements, 20-6-608
- Insurance settlement, 20-6-608
- K-12 districts, transition after formation, 20-6-703
- Land Commissioners, Board of - authority, Const., X, 4
- Lease-purchase agreements, 20-6-609
- Local government, transfer between governmental entities, 7-8-101
- Notice of intent to sell or otherwise dispose, 20-6-604
- Personal property ordered but not paid for, recording, 20-9-209
- Power of districts and trustees, 20-3-324, 20-6-101, 20-6-601, 20-6-602, 20-6-703
- Protests concerning sale or disposal, 20-6-604
- Public school fund, comprises, Const., X, 2; X, 5
- Recreation programs, public - use, 20-7-804
- Renting, 20-6-607
- Repossession of land when, 20-6-605
- Sale or disposal procedures, 20-6-604
- Smoking not allowed in, 50-40-201
- Surplus, 18-5-201 — 18-5-205
- Will or sufferance, acquired by - repossession, 20-6-605

PROPERTY TAX

- Assessment of property, centrally assessed property, 15-23-101, 15-23-105, 15-23-106
- Budget increase
 - approval, 20-9-353
 - notice, 15-10-203
- Coal gross proceeds tax, revenue from, 15-23-703, 15-23-705 — 15-23-707, 20-9-141, 20-9-331, 20-9-333, 20-9-501, 20-10-144, 20-10-146
- County basic tax, 15-24-1501, 15-24-1802, 15-24-1902, 15-24-2002, 20-6-702, 20-9-331, 20-9-333
- Debt service fund reappropriation for reduction in, 20-9-438
- Definitions, 15-1-101
- Delinquent, 20-9-212, 20-9-443
- Election, vote required for increase in over-BASE budget, 20-9-353
- Elementary schools with ANB of 9 or fewer pupils, 20-9-303
- Equalization of valuations, 15-7-112
- Federal funds in lieu of, 20-9-143, 20-9-331, 20-9-333, 20-10-204, 20-10-205
- Federal money, revenue available for reduction, 20-10-144
- General fund balance reappropriation for reduction in, 20-9-104, 20-9-141

PROPERTY TAX (Continued)

- General fund operating reserve for reduction in, prohibited, 20-9-104
- Hard-rock mining, large-scale mineral development, 15-37-117
- Levies
 - accounting, 20-9-212
 - additional funding and levy, 20-3-324, 20-6-603, 20-6-621, 20-9-104, 20-9-353
 - adult educational programs, requirements, 20-7-705
 - BASE budget levy, 20-3-324, 20-6-702, 20-9-104, 20-9-141, 20-9-306, 20-9-308
 - bonds
 - action to restrain, 20-9-465
 - payment of principal and interest, for, 20-9-401, 20-9-410, 20-9-439, 20-9-444, 20-9-466
 - school facilities, state reimbursement - use, 20-9-370
 - boundary changes, effect, 20-6-411
 - budget amendment, emergency, 20-9-168
 - budget, final — to finance, 20-9-131, 20-9-142
 - building reserve fund requirements, 20-9-502, 20-9-503
 - bus depreciation reserve fund requirements, 20-10-147
 - business incubators, tax exemption - applicability, 15-24-1802
 - challenges, 20-9-466
 - coal
 - coal severance tax revenues, 15-35-108
 - gross proceeds tax, revenue from, 15-23-703, 15-23-705 - 15-23-707, 20-9-141, 20-9-501, 20-10-144, 20-10-146
 - computation, 15-10-321, 20-3-205
 - county basic tax, 15-24-1402, 15-24-1502, 15-24-1802, 15-24-1902, 15-24-2002, 20-5-324, 20-6-702, 20-7-437, 20-9-331, 20-9-333, 20-10-146
 - county commissioners, board of - fixing of tax levy, 15-10-201
 - debt service fund requirements, 20-9-439, 20-9-440, 20-9-466, 20-9-506
 - elections
 - special absentee election board program - funding, 13-13-230
 - property tax increase, notification required, 20-9-353
 - elementary schools with ANB of 9 or fewer pupils, 20-9-141, 20-9-303
 - federal money, consideration, 20-10-144
 - forest reserve money, federal - apportionment, 20-9-331, 20-9-333, 20-10-146
 - general fund levy requirements, 20-3-205, 20-9-141, 20-9-142
 - guaranteed tax base aid, determination, 20-9-367 — 20-9-369
 - industrial park tax exemption, applicability, 15-24-1902
 - industries, new or expanding - tax benefit not applicable, 15-24-1401, 15-24-1402
 - interstate school agreements, joint, 20-9-705
 - joint district requirements, 20-3-106, 20-9-151, 20-9-152
 - judgments, payment, 2-9-316
 - limitation on amount of taxes levied, 15-10-321, 15-10-401, 15-10-402, 15-10-406, 15-10-420, 15-24-1501
 - local economic development organization, building and land tax exemption - applicability, 15-24-2002
 - mills, to be made in, 15-10-201
 - certification of millage rates, 15-10-202
 - nonoperating fund requirements, 20-9-505, 20-9-506
 - over-BASE budget levy, 20-3-324, 20-9-104, 20-9-141, 20-9-306, 20-9-308
 - personal property tax revenue reduction, reimbursement, 15-1-111
 - remodeling of existing buildings or structures, tax benefit, 15-24-1501
 - retirement fund requirements, 20-9-501
 - state equalization aid levy, 20-9-360
 - state mandates, effect, 1-2-113
 - taxable values
 - building reserve, limitation, 20-9-502
 - certification, 15-10-202
 - elementary districts, 20-6-210, 20-6-213
 - high school districts, 20-6-308
 - industrial facility agreement for bond issues in excess of maximum, 20-9-407
 - opening or reopening of high school, 20-6-503
 - trustee positions, additional requested - determination, 20-3-352, 20-3-354

PROPERTY TAX (Continued)

Levies (Continued)

- transportation fund requirements, 20-10-144, 20-10-146
- tuition debt, discontinued districts, 20-6-413
- tuition payments, consideration when, 20-9-141
- valuation, See Valuation
- value-added manufacturing, expanding industry taxable value decrease - applicability, 15-24-2403
- vocational-technical secondary schools, 20-9-404
- Metal mines license tax, allocation, 15-37-117
- Nonoperating fund operating reserve for reduction in, 20-9-505
- Over-BASE budget levy, 20-9-308
- Personal property tax revenue reduction, reimbursement, 15-1-111
- Protests lost, bond issue for repayment, 2-9-316, 20-9-403, 20-9-406, 20-9-421, 20-9-435
- Reduction, revenue available for, 20-9-104, 20-9-141, 20-9-346, 20-9-438, 20-9-439, 20-9-501, 20-9-505, 20-10-144, 20-10-146
- Refunds, 15-16-602 — 15-16-604
- Retirement fund reappropriation for reduction in, 20-9-501
- Revaluation of taxable property, 15-7-111, 15-7-113
 - supplemental, provisions are, 15-7-114
- State money, remittance by county treasurer to state treasurer, 15-1-504
- Taxable values, See Levies
- Tuition payments, reduction when, 20-9-141
- Urban renewal tax increment financing, state equalization aid levy distribution, 20-9-360, 20-9-361
- Valuation, 20-6-412, 20-9-122, 20-9-366 — 20-9-369
- Vote required for increase on over-BASE budget, 20-9-353

PSYCHOLOGISTS

- Gifted and talented children programs, 20-7-901
- Privileged communications, 26-1-801, 26-1-807, 26-1-809
- Psychology teachers, privileged communications, 26-1-801, 26-1-808
- Special education, allowable costs, 20-7-431
- “Specialist” defined, 20-4-131
- Teachers’ Retirement System, membership, 19-20-302, See RETIREMENT, Teachers’ Retirement System

PUBLIC EMPLOYEES’ RETIREMENT ADMINISTRATION, Title 19, chapter 2

See RETIREMENT

PUBLIC EMPLOYEES’ RETIREMENT SYSTEM, Title 19, chapter 3

See RETIREMENT

PUBLIC MEETINGS, See OPEN MEETINGS**PUBLIC OFFICERS OR EMPLOYEES**

See also specific office

- Absence from state, 2-16-112
- Affidavits, warrants and other claims
 - auditing officers, requirements, 2-2-205
 - settlements withheld when, 2-2-207
- Appointment void, effect, 2-16-501
- Assistants, 2-16-301 — 2-16-303
- Audits
 - local government entities, audits and financial reports, 2-7-504, 2-7-507, 2-7-511, 2-7-515
 - responsibilities generally, 2-2-205, 2-2-207
- Bond payment funds, liability, 20-9-445, 20-9-446
- Bonds, official
 - action on, 2-9-527, 2-9-528
 - applicability of provisions, 2-7-501
 - appointees, for, 2-7-503
 - approval, filing, record, and custody, 2-7-506
 - conditions, form, and signatures, 2-7-504
 - defects, 2-9-512
 - deputies, for, 2-7-502

PUBLIC OFFICERS OR EMPLOYEES (Continued)

- Bonds, official (Continued)
 - failure to file, 2-16-501
 - judgments, 2-9-516, 2-9-527, 2-9-528
 - liability of principal or sureties, 2-9-511, 2-9-512, 2-9-514, 2-9-515, 2-9-521 — 2-9-525
 - new or additional bond, 2-9-521, 2-9-524, 2-9-525
 - security, additional, 2-9-513 — 2-9-515
 - sureties, 2-9-507, 2-9-513, 2-9-517, 2-9-522 — 2-9-526
 - trustees, receivers, or assignees - of, 2-7-505
- Candidacy for office, eligibility, 49-1-202, 49-1-203; Const., IV, 4
- Collective bargaining, See COLLECTIVE BARGAINING
- Confidential communications to, 26-1-810
- Contracts
 - conflict of interest provisions, 2-2-201 — 2-2-203, 20-6-636, 20-9-204
 - public, liability for bonding requirements, 18-2-202
 - school district architectural service, contingent fees prohibited, 20-6-636
- Criminal conviction, 2-16-501, 2-16-603
- Death, 2-16-501, 2-16-513; Const., VI, 6; VI, 14
- Deferred compensation plans, Title 19, chapter 50, part 1, See DEFERRED COMPENSATION
- Definitions, 2-2-102, 2-18-502, 13-1-101
- Deputies, 2-16-301 — 2-16-303
- Disability, Const., VI, 6, See Vacancy in office
- Disabled persons, state policy, 49-4-202
- Discriminatory practices, See DISCRIMINATION, generally
- Elections, void - effect, 2-16-501
- Ethics, Code of, Title 2, chapter 2; Const., XIII, 4, See ETHICS
- Fair Practices, Code of, Title 49, chapter 3, See DISCRIMINATION, Government, state and local
- Financial disclosure statements, 2-2-131, 2-2-106
- Group benefits
 - advisory council, 19-50-101
 - retirement benefits, premiums withheld, 19-2-904
 - legal, enumeration, 1-1-216
- Holidays, 2-18-601, 2-18-603
- Immunity from suit, Title 2, chapter 9, part 1
- Impeachment, officers subject to, Const., V, 13
- Inability to perform duties, 2-16-501, 2-16-603; Const., VI, 6
- Incompetence, 2-16-603
- Indian reservations, state jobs — hiring preference for residents, 18-1-110, 49-2-303, 49-2-403
- Insurance, See Group benefits
- Jury duty, 2-18-604, 2-18-619
- Leave of absence, 2-18-601, 2-18-606, 2-18-612, 2-18-620
- Leave time
 - definitions, 2-18-601
 - jury duty, 2-18-604
 - mandatory leave of absence, 2-18-620
 - military, 2-18-604, 2-18-614, 2-18-621
 - parental leave, 2-18-606
 - rules, 2-18-603, 2-18-604
 - sick leave, 2-18-601, 2-18-618
 - unlawful termination of employee, 2-18-621
 - vacation leave, 2-18-601, 2-18-611
 - witness, service as, 2-18-619
- Mental illness, 2-16-501, 2-16-603; Const., VI, 14
- Military service, 39-31-404
- Nepotism, Title 2, chapter 2, part 3, See NEPOTISM
- Office hours, 2-16-117
- Other public office, may not hold, Const., VI, 5
- Political activity
 - discrimination, 49-2-308, 49-3-201 — 49-3-207, 49-3-209
 - justifiable when, 49-2-308
- Privileged communications to, 26-1-810
- Qualifications generally, 2-16-102; Const., VI, 3

PUBLIC OFFICERS OR EMPLOYEES (Continued)

- Removal from office, 2-16-501; Const., VI, 14, See also RECALL
- Residence, 2-16-111, 2-16-501; Const., VI, 1; VI, 3; VII, 9
- Resignations, 2-16-501, 2-16-502, 2-16-622, 2-16-635; Const., VI, 6; VI, 14, See also Vacancy in office
- Retirement, Title 19, chapters 2 and 3, See RETIREMENT, Public Employees' Retirement Administration; Public Employees' Retirement System
- School district architectural service contracts, contingent fees prohibited, 20-6-636
- Signatures
 - ex officio officers, 2-16-115
 - facsimile, 2-16-114
- Social security system, Title 19, chapter 1, See SOCIAL SECURITY
- Subordinate officers, 2-16-301
- Surety bonds, See Bonds, official
- Surplus property transfers by, 18-5-205
- Termination
 - contracts, interest in — allowed when, 2-2-201
- Term of office, 2-16-213; Const., VI, 1; VI, 6
- Travel expenses, 2-18-501 — 2-18-504, 2-18-511, 2-18-512
- Vacancy in office, 2-16-501, 2-16-502, 2-9-513, 2-16-622, 2-9-524, 2-16-635
- Violation of official duties, 2-16-501, 2-16-603

PUBLIC PARTICIPATION IN GOVERNMENT

- See also OPEN MEETINGS
- Declaratory rulings, publication and judicial review, 2-3-113
- Definitions, 2-3-102
- Electronic mail, dissemination/receipt of comment, 2-3-301
- Enforcement, 2-3-114
- Exceptions, 2-3-112
- Guidelines, 2-3-103
- Legislative intent, 2-3-101
- Notice provisions, 2-3-103 — 2-3-107, 7-1-2121
- Opportunity to submit views, 2-3-111
- Right, Const., II, 8; II, 9
- Rules, guidelines adopted as, 2-3-103

PUBLIC RECORDS

- See also RECORDS
- Civil rights laws, administration - requirements, 49-2-102
- Collective bargaining dispute, fact finder's report, 39-31-309
- Copies, 2-6-102, 2-6-103, 2-6-110, 2-6-111
- Custody, 2-6-111
- Definitions, 2-6-101, 2-6-110, 2-6-401
- Delivery to incumbent
 - compel, proceedings to, 2-6-107
 - enforcement, 2-6-108
- Electronic information, access to, 2-6-103, 2-6-110
- Fees, copying and filing, no fees to local taxing jurisdiction 2-6-103, 2-6-110
- Inspection, open to
 - administrative proceedings, contested case decisions and orders, 2-4-623
 - administrative rules, policy statements, and notices, 2-4-10
 - audit and financial reports of local government entities, 2-7-514, 2-7-521
 - bonds, performance - notice of claim against, 18-2-204
 - child abuse and neglect records when, 41-3-205
 - citizens' rights, 2-6-102
 - election records, 13-1-109
 - governmental entities, claims against - compromise or settlement agreements, 2-9-303, 2-9-304
 - open meetings, minutes or records, 2-3-212
 - public officers' records, 2-6-102, 2-6-104
 - school funds, accounting records, 20-9-213
 - teachers' retirement board records, 19-20-201
- Library records confidentiality, 22-1-1103

PUBLIC RECORDS (Continued)

- Local government records committee, 2-6-401 — 2-6-404
- Local government records, retention and disposition, 2-6-401 — 2-6-404, 20-1-212
- Mailing lists, distribution or sale, 2-6-109
- Possession, 2-6-106
- Removal, 2-6-105
- Reproduction, 2-6-111
- Right to know, Const., II, 9
- Tort actions, attorneys' fees, 2-9-314
- "Writings" defined, 2-6-101
- Youth court records and proceedings, confidentiality, 41-5-601

PUPIL INSTRUCTION DAYS and MINIMUM AGGREGATE HOURS

- Average number belonging (ANB), calculation, 20-9-311, See AVERAGE NUMBER BELONGING (ANB)
- Commemorative exercises held when, 20-1-306
- Emergencies, closures by effect, 20-9-806
- Failure to provide minimum number, 20-1-301, 20-1-302
- Flexible school day, 20-1-301, 20-1-302, 20-1-304
- Graduating seniors, requirement, 20-1-301
- Holidays, 20-1-305, 20-1-307
- Home schools, number required, 20-5-109, 20-5-111
- Hours required, daily and weekly, 20-1-301, 20-1-302, 20-2-121
- Minimum number, 20-1-301, 20-1-304, 20-5-109, See also EMERGENCIES, Closure of schools
- Nonpublic schools, number required, 20-5-109
- Saturday, on — when, 20-1-303, 20-2-121, 20-3-324, 20-7-503
- Transportation reimbursements, state — computation, 20-10-145
- Year, number required, 20-1-301, 20-1-302

PUPIL-INSTRUCTION-RELATED DAYS, 20-1-304, 20-2-121, 20-9-311**PUPILS, See STUDENTS****PURCHASING, See PROCUREMENT****Q****QUARANTINE MEASURES, 50-1-204****R****RECALL**

- Circulation sheets, 2-16-612, 2-16-614, 2-16-617 — 2-16-620
- Citation of Montana Recall Act, 2-16-601
- Definitions, 2-16-602
- Elections, 13-1-101, 2-16-613, 2-16-621, 2-16-622, 2-16-631through 2-16-635
- Grounds for, 2-16-603
- Method of removal cumulative, 2-16-611
- Officers, 2-16-603, 2-16-613, 2-16-621, 2-16-622, 2-16-633, 2-16-635
- Petitions, 2-16-612 — 2-16-618, See also Circulation sheets

RECORDS

See also PUBLIC RECORDS

Child abuse and neglect, disclosure to school employees, 41-3-205

Districts

cessation, surrender, 20-6-418

K-12, transitions after formation, 20-6-703

Drug and intoxicating substance violations, information not part of, 41-5-601

Drug use/criminal activity, disclosure to school, 41-5-215

Finance

accounting, 20-3-325, 20-9-203, 20-9-213, 20-9-221; Title 2, chapter 7, part 5

appropriation items, entries of transfers among, 20-9-208

audits, 20-3-205, 20-9-203, 20-9-213, 20-10-202; Title 2, chapter 7, part 5, See also AUDITS

bond registration, 20-9-442

clearing accounts, 20-9-220

RECORDS (Continued)

- Finance (Continued)
 - destruction allowed when, 20-9-215
 - food service commodity, 20-10-202
 - guaranteed tax base aid, 20-9-369
 - public availability, 20-9-213
 - state equalization aid, 20-9-346
- Immunization, 20-5-109, 20-5-403, 20-5-405, 20-5-406
- Libraries, confidentiality, 22-1-1101 — 22-1-1103, 22-1-1111
- Local government records committee, 2-6-402 — 2-6-404
- New students, enrollment — requirements, 44-2-511
- Noncustodial parent in parenting plan, access to, 40-4-225
- Notification to schools by youth court, 41-5-215
- Old records, destruction when, 2-6-401 — 2-6-404, 20-1-212, 20-9-215
- Public Education, Board of, 20-2-114
- Regents of Higher Education, Board of, 20-2-114
- Retention, 2-6-401 — 2-6-404, 20-1-212, 20-7-101, 20-9-215
- Transfer of, 20-1-213
 - to youth court, 41-5-1707
- Trustees, 20-3-323
- Vocational education, K-12, 20-7-302.1
- Youth court and law enforcement, disclosure of record, 41-5-215
- Youth court, confidentiality, 41-5-125, 41-5-215

RECREATION

- Activities, conduct, 20-7-803
- Authorization, 20-7-801
- Board of recreation, creation, 20-7-802
- Directors and instructors, 20-7-803, 20-7-804
- Funding, 7-16-4107, 20-7-801
- Gifts, acceptance, 20-7-803
- Interlocal Cooperation Act, Title 7, chapter 11
- Operation, 7-16-4108, 20-7-802
- School property, 20-7-804, 20-7-805

RELIGION, Const., X, 7

- Bible or other religious material, inclusion in libraries, 20-7-112
- Discrimination based on, prohibited, Const., X, 7, See also DISCRIMINATION, generally
- Enrollment, 20-5-102
- Immunization requirements, exemption when, 20-5-405
- Prayer in schools, 20-7-112
- Religious instruction, release time, 20-1-308; Const., X, 7
- Sectarian publications prohibited, 20-7-112

RESIDENCE

- Deaf and Blind, Montana School for the — transportation expenses of students, 20-8-121
- Determination, rules for, 1-1-215, 20-7-420
- Elections
 - absentee ballot, 13-13-212; 13-13-271 — 13-13-273
 - absentee election board members, 13-13-225
 - school election requirements, 20-3-338, 20-20-301
- Electors, qualification and determination, 13-1-111 — 13-1-114; Const., IV, 2
- Governmental participation by residents, Title 2, chapter 3, part 1; Const., II, 8, See PUBLIC PARTICIPATION IN GOVERNMENT
- Indians, schools, admittance, 20-5-108
- Political rights and duties of residents, Title 49, chapter 1, part 2
- Public officers, 2-16-501; Const., VI, 1; VI, 3; VII, 9
- Public records, citizens' rights, 2-6-102, 22-1-1103
- Resident bidder for purpose of contracts, 18-1-106, 18-2-409
- Schools
 - admittance, 1-1-215, 20-1-101, 20-5-101, 20-5-102, 20-5-108, 20-7-420
 - correspondence study, 20-7-116
 - libraries, use, 20-7-203
 - out-of-district attendance agreements, 20-5-322, See also TUITION

RESIDENCE (Continued)

Schools (Continued)

special education

financial responsibility requirements, 20-7-420

transportation tuition, 20-7-441

tuition for child attending state institution, 20-7-424

RETIREMENT

Public Employees' Retirement Administration

accounts, 19-2-403

actuarial tables, 19-2-403, 19-2-405

actuary, 19-2-303, 19-2-405, 19-2-407

administrative expenses, 19-2-408, 19-2-502, 19-2-505

applicability of chapter, 19-2-302

assets and liabilities of systems, 19-2-405, 19-2-407, 19-2-505

beneficiaries, 19-2-303

death of member caused by, limitations on payment of benefits, 19-2-804

designation, 19-2-801

no designation, effect, 19-2-802

distributions to, 19-2-1007

estate of member, as, 19-2-802

minor, as, 19-2-802

reinstatement of member, effect, 19-2-603

survivorship benefits, 19-2-303, 19-2-702, 19-2-902, 19-2-906, 19-2-907

benefits, 19-2-303

calculation, 19-2-701

commencement of benefits, 19-2-908

death benefits, 19-2-401, 19-2-802, 19-2-804

determination, 19-2-403

distribution, 19-2-1007

duplication prohibited, 19-2-703

estimates when, 19-2-901

exemption from taxation and legal process, 19-2-1004

family law orders, effect, 19-2-907

fixing of, 19-2-401

forfeitures, use, 19-2-1006

group insurance premiums, withholding, 19-2-904

maximum, limitation, 19-2-1001

military service, 19-2-707

modification, 19-2-403

payments, 19-2-502, 19-2-902, 19-2-903

service retirement, 19-2-702, 19-2-907

survivorship benefits, 19-2-303, 19-2-701, 19-2-702, 19-2-902, 19-2-906, 19-2-907

vesting upon termination of system, 19-2-1002

withholding for support obligation, 19-2-909

budget act superseded, 19-2-1008

budget amendment required when, 19-2-408

citation of the public employees' retirement act, 19-2-301

contributions, See employee contributions; employer contributions

death benefits, See also benefits

claims, approval, 19-2-401

inheritance, order of, 19-2-802, 19-2-804

survivorship benefits, 19-2-303, 19-2-701, 19-2-702, 19-2-902, 19-2-906, 19-2-907

definitions, 19-2-303, 19-2-907

disability retirement benefits

determination, 19-2-403

determination of disability, 19-2-406

disability, 19-2-303

eligibility, 19-2-702

family law orders, alternate payees, 19-2-907

limitations, 19-2-906

discrimination prohibited, 19-2-403, 49-2-309

RETIREMENT (Continued)

Public Employees' Retirement Administration (Continued)

- employee contributions, See also employees; membership
 - accumulated contributions, 19-2-303
 - dormant, nonvested — transfer, 19-2-1003
 - discontinuance, effect, 19-2-1002
 - installment payments, 19-2-602
 - maximum contribution, benefit limitation, 19-2-1001
 - military service, 19-2-707
 - normal cost contribution rate, funding, 19-2-303, 19-2-405
 - refund, 19-2-502, 19-2-601 — 19-2-603, 19-2-1003, 19-2-1004
 - rollover, 19-2-708
 - withdrawal, 19-2-602, 19-2-907
 - reinstatement following, 19-2-603
- employees, 19-2-303, See also employee contributions; membership
 - determination, 19-2-403
 - termination of service, 19-2-602, 19-2-706
- employer contributions, 19-2-303, See also employers
 - normal cost contribution rate, funding, 19-2-303, 19-2-405
 - payments, 19-2-506
 - unfunded liability contribution rate, funding, 19-2-405
- employers, 19-2-303, See also employer contributions
 - terminating member, employment-related claim, 19-2-602
- enforcement of provisions, 19-2-403
- family law orders, alternate payees, 19-2-907
- fraud, 19-2-903, 19-2-1009
- funds
 - dormant savings account, transfer, 19-2-1003
 - pension trust fund, See pension trust funds
- investment expenses, 19-2-502
- membership, See also employee contributions; employees
 - compensation of members, limit, 19-2-1005
 - definitions, 19-2-303
 - membership service, 19-2-702
 - reinstatement, 19-2-603
 - termination, 19-2-601 — 19-2-603, 19-2-706, 19-2-1002
- pension trust funds, 19-2-303
 - administration, 19-2-408
 - assets, 19-2-502
 - employee's accumulated contributions, 19-2-602, 19-2-1003
 - establishment, 19-2-501
 - exemption from taxation and legal process, 19-2-1004
 - investment, 19-2-504
 - management, 19-2-503
 - report concerning, 19-2-407
 - transfer between, 19-2-507
 - use, restrictions, 19-2-505
- public employees' retirement board, 2-15-1009, 19-2-303
 - actuary, employment, 19-2-405
 - administrative staff, 19-2-404
 - benefit payments, duties, Title 19, chapter 2, part 9
 - compensation, 19-2-402
 - contributions, duties, See employee contributions; employer contributions
 - death benefits, duties, 19-2-401
 - disability, determination, 19-2-406
 - disability retirement, duties concerning, See disability retirement
 - family law orders, rules, 19-2-907
 - funding, 19-2-409
 - legal counsel, 19-2-401
 - location, 19-2-401
 - officers and employees, 19-2-401
 - pension trust funds, trustee, 19-2-503

RETIREMENT (Continued)

- Public Employees' Retirement Administration (Continued)
 - public employees' retirement board (Continued)
 - powers and duties generally, 19-2-403
 - quorum, 19-2-401
 - rules by, 19-2-401, 19-2-403, 19-2-506, 19-2-701, 19-2-702, 19-2-907
 - service credits, 19-2-701, 19-2-704
 - social security, administration, Title 19, chapter 1, See SOCIAL SECURITY
 - third party mailings, 19-2-403
 - unfunded liabilities, amortization, 19-2-405
 - records, 19-2-401, 19-2-403, 19-2-406, 19-2-903, 19-2-1009
 - rule making authority, 19-2-1010
 - service credit, 19-2-303, 19-2-701
 - eligibility, 19-2-403
 - purchase allowed, 19-2-704
 - reinstatement, 19-2-603
 - rules, 19-2-403
 - transfer, 19-2-704
 - service retirement
 - eligibility, 19-2-702
 - family law orders, alternate payees, 19-2-907
 - short title, 19-3-101
 - survivorship benefits, See beneficiaries
 - termination of system, 19-2-1002
 - transfer of service and contributions, 19-2-709
 - unfunded liabilities, 19-2-303
 - contribution rate, 19-2-405
 - workers' compensation payments, effect, 19-2-905
- Public Employees' Retirement System
 - beneficiaries
 - accumulated contributions paid to, when, 19-3-1210, 19-3-1211
 - contracting employer, action for tax levy by, 19-3-204
 - death payments to, 19-3-1210
 - minor, as, 19-3-1204
 - survivorship benefit, 19-3-1204, 19-3-1205, 19-3-1501, 19-3-1604
 - teachers' retirement board, transfer for — when, 19-3-511
 - benefits, See also death payments
 - commencement, 19-2-908
 - discrimination prohibited, 49-2-309
 - early retirement, 19-3-902, 19-3-908
 - federally subsidized employees, 19-3-402
 - guaranteed annual benefit adjustment, 19-3-1605
 - nonapplication to defined contribution plan, 19-2-1102
 - optional, forms, 19-3-1501
 - survivorship benefit, See beneficiaries
 - withholding for support obligation, 19-2-909
 - citation of the public employees' retirement system act, 19-3-101
 - contracting employer, 19-3-108
 - contract provisions, 19-3-201, 19-3-411
 - conversion of existing plan, 19-3-203
 - disability benefit cancellation, notice, 19-3-1015
 - employee request for employer participation, 19-3-202
 - incentive program, 19-3-908
 - tax levy, authority for, 19-3-204
 - contributions, See employee contributions; employer contributions
 - cost of living increase, 19-3-1604
 - creation, 19-3-103
 - death payments, 19-3-1201 — 19-3-1203, See also benefits
 - defined benefit plan, 19-3-108
 - administrative expense, 19-2-408
 - member contribution, 19-3-315
 - defined contribution plan, 19-3-2102 — 19-3-2134

RETIREMENT (Continued)

Public Employees' Retirement System (Continued)

- definitions, 19-3-108
- disability retirement benefits
 - amount, 19-3-1007, 19-3-1008
 - application, 19-3-1005
 - cancellation, 19-3-1015, 19-3-1104
 - cost-of-living increase, 19-3-1604
 - death payments, applicability, 19-3-1201
 - duty-related disability, 19-3-1007, 19-3-1008
 - eligibility, 19-3-1002
 - medical examination requirements, 19-3-1015
 - reduction, 19-3-1103
 - reemployment of retiree, 19-3-1103, 19-3-1104
 - reinstatement to duty, 19-3-1015, 19-3-1104
- discrimination prohibited, 49-2-309
- education fund, 19-3-112
- employee contributions, *See also* membership
 - accumulated contributions, 19-3-315, 19-3-511
 - additional service, purchase, 19-3-513
 - beneficiary, payment to — when, 19-3-1210, 19-3-1211
 - death payments, 19-3-1202, 19-3-1210
 - employer, pick up and payment, 19-3-315
 - federal employment, 19-3-510
 - federally subsidized employees, 19-3-402
 - illness or injury, absence due to, 19-3-504
 - installment payments, 19-3-504, 19-3-505, 19-3-512, 19-3-513
 - military service, 19-3-503, 19-3-511
 - other retirement systems, 19-3-512
 - previous employment with employer, 19-3-505
 - public service employment, 19-3-509
 - rate, 19-3-315
 - refund, 19-3-401, 19-3-504, 19-3-512, 19-3-1211
 - teachers' retirement board, transfers from, 19-3-511
- employees, *See* employee contributions; membership
- employer contributions, 19-3-108, 19-3-112
 - illness or injury, absence due to, 19-3-504
 - incentive program, 19-3-908
 - payments, 20-9-501
 - previous employment with employer, 19-3-505
 - public service employment, 19-3-509
 - rate, 19-3-316
 - refund, 19-3-318
 - state employer, budget — inclusion, 19-3-317
 - teachers' retirement board, transfers from, 19-3-511
- employers, 19-3-108, *See also* contracting employer; employer contributions
 - employee contributions, pick up and payment, 19-3-315
 - incentive program, 19-3-908
- funds, *See* pension trust fund
- governance, 19-3-103
- membership, *See also* employee contributions
 - contracts for, *See* contracting employer
 - effective date, 19-3-401
 - eligibility, 19-3-402, 19-3-411
 - exclusions, 19-3-403
 - exemption from, 19-3-111, 19-3-401
 - federally subsidized employees, eligibility, 19-3-402
 - inactive vested or nonvested members, 19-3-401
 - legislative members, 19-3-521
 - optional, 19-3-412
 - termination, 19-3-318, 19-3-401
- pension trust fund, 19-3-108, 19-2-408

RETIREMENT (Continued)

Public Employees' Retirement System (Continued)

school districts

- employees, eligibility, 19-3-401
- employer contributions, payment, 20-9-501
- special education, allowable costs, 20-7-431, 20-7-435

service credit

- absence from service, 19-3-401, 19-3-501, 19-3-504
- additional, purchase, 19-3-513, 19-3-908
- death payments, 19-3-1202
- federal employment, 19-3-510
- illness or injury, absence due to, 19-3-504
- legislative members, 19-3-521
- military service, 19-3-503, 19-3-511
- other retirement systems, 19-3-512
- previous employment with employer, 19-3-505
- public service employment, 19-3-509
- purchase, 19-3-401, 19-3-513, 19-3-908
- second retirement, requirements, 19-3-1105
- teachers' retirement system, transfer to or from, 19-3-511, 19-20-401, 19-20-409, 19-20-804, 19-20-902

service retirement

- additional service, purchase — effect, 19-3-513
- adjustment for certain members, 19-3-905
- amount, 19-3-904
- cost-of-living increase, 19-3-1604
- disability retirement status, change from, 19-3-1103
- early retirement, 19-3-902, 19-3-908
- eligibility, 19-3-401, 19-3-901, 19-3-902
- inactive members, 19-3-401
- incentive program, 19-3-908

short title, 19-3-101

social security system, separateness, 19-1-101, 19-1-104, 19-1-304

Teachers' Retirement System

- actuary, designation and duties, 19-20-203
- administration, Title 19, chapter 20, part 2
- expenses, 19-20-605
- annuities, See benefits
- assets and liabilities, 19-20-201, 19-20-502, 19-20-601
- benefits, 19-20-206, 19-20-701
 - additional service, purchase, 19-20-404
 - annuity, 19-20-101
 - compensation limit, 19-20-715
 - disability, See disability retirement
 - duplication prohibited, 19-20-407
 - early retirement, 19-20-802
 - exemption from taxation and legal process, 19-20-706
 - family law court order, 19-20-305
 - group insurance premiums withheld from, 19-20-1101
 - guarantee by state, 19-20-104
 - guaranteed annual benefit adjustment, 19-20-719
 - increase in, 19-20-719
 - maximum, limitation, 19-20-710
 - members, 19-20-1001
 - minimum monthly allowance, 19-20-720
 - optional, 19-20-702
 - payments, 19-20-703, 19-20-705
 - postretirement adjustment, 19-20-702
 - public employees' retirement service credits, death of member prior to qualification, 19-20-409
 - retirees, 19-20-1002
 - superannuation, 19-20-804

RETIREMENT (Continued)

Teachers' Retirement System (Continued)

benefits (Continued)

- survivorship, 19-20-720, 19-20-717
- vesting upon termination of system, 19-20-504
- withholding for support obligation, 19-20-306

community college districts

- pension accumulation fund, employer contribution, 19-20-605

contributions, employer

- cooperative extension service, employment with, 19-20-410
- injury, employment-related — following absence due to, 19-20-411
- leave, employment while on, 19-20-403
- military service, 19-20-404
- out-of-state employment, 19-20-402
- payment, 19-20-208, 19-20-411, 20-9-501
- pension accumulation fund, 19-20-605
- private schools, employment in, 19-20-408
- public employees' retirement board, transfers from, 19-20-409
- state contributions, termination, 19-20-604
- substitute teachers, 19-20-302

contributions, member, See also creditable service

- annuity savings fund, 19-20-602
- cooperative extension service, employment with, 19-20-410
- court order, family law 19-20-305
- death benefits, 19-20-1001 — 19-20-1003
- discontinuance, 19-20-504
- employers to pick up, 19-20-208, 19-20-602
- injury, employment-related — following absence due to, 19-20-411
- installment payments, 19-20-402 — 19-20-404, 19-20-408, 19-20-410, 19-20-411
- internal revenue service qualification rules, 19-20-212
- leave, employment while on, 19-20-403
- maximum contribution limitation, 19-20-718
- military service, 19-20-404
- out-of-state employment, 19-20-402
- pension accumulation fund, 19-20-605
- private schools, employment in, 19-20-408
- rollover, 19-20-414
- service credit, purchase, 19-20-415, 19-20-417
- substitute teachers, 19-20-302
- supplemental contribution, 19-20-621
- transmittal, 19-20-208
- withdrawal, 19-20-304, 19-20-401, 19-20-602, 19-20-603, 19-20-706
- withholding, implied consent, 19-20-103

corporate powers, 19-20-102

court order, 19-20-305

creation, 19-20-102

creditable service, 19-20-401

- absence due to employment-related injury, 19-20-401, 19-20-411
- additional, purchase, 19-20-404
- cooperative extension service, employment with, 19-20-401, 19-20-410
- death benefits, 19-20-1001, 19-20-1002
- disability retirement, 19-20-901
- early retirement, 19-20-802
- inactive membership, 19-20-303
- leave, employment while on, 19-20-401, 19-20-403
- limitations, 19-20-405
- maximum contribution limitation, 19-20-708
- membership termination, 19-20-304
- military service, 19-20-401, 19-20-404
- minimum monthly benefit allowance, qualification, 19-20-720, 19-20-709
- multiple periods of service, effect, 19-20-407
- out-of-state employment, 19-20-401, 19-20-402

RETIREMENT (Continued)

Teachers' Retirement System (Continued)

creditable service (Continued)

part-time service, 19-20-401

policies governing, 19-20-204

prior service, 19-20-101, 19-20-401, 19-20-406

private schools, employment in, 19-20-402, 19-20-408

public employees' retirement system, transfer to or from, 19-3-511, 19-20-401, 19-20-409,
19-20-804, 19-20-902

service credit, purchase, 19-20-415, 19-20-417

substitute teachers, 19-20-302

superannuation retirement, 19-20-801

death benefits, 19-20-1001, 19-20-1003

membership, termination, 19-20-304

optional allowances, effect on, 19-20-702

public employees' retirement service credits, prior to qualification, 19-20-409

definitions, 19-20-101

disability retirement

additional service, purchase — effect, 19-20-902

adjustment, 19-20-904

benefits, 19-20-206, 19-20-701, 19-20-902, 19-20-1003

cancellation, 19-20-905

conversion from optional allowance when, 19-20-702

discontinuance and revocation, 19-20-903

eligibility, 19-20-901

medical examination requirements, 19-20-901, 19-20-903

minimum monthly allowance, 19-20-720, 19-20-709

reduction when, 19-20-904

restoration to active service, 19-20-905

discrimination prohibited, 19-20-302, 49-2-309

earned compensation, 19-20-805

employer, 19-20-101, See also contributions, employer

duties, 19-20-208, 19-20-302

establishment, 19-20-102

estate of member, payment of contributions to, 19-20-602, 19-20-1001

expenditures, 19-20-201

false statements and falsification of records, penalty, 19-20-105

fraud, 19-20-105, 19-20-401

funds

actuarial valuation, 19-20-201

administration, 19-20-501

annuity reserve fund reserves, guarantee by state, 19-20-104

annuity savings fund, 19-20-503, 19-20-602, 19-20-605

custodian, 19-20-501

dormant savings account, transfer, 19-20-503

establishment and maintenance, 19-20-201, 19-20-601

expense fund, 19-20-202

financing, method, 19-20-601

interest, 19-20-201, 19-20-501, 19-20-605

investment, 19-20-501

pension accumulation fund, 19-20-503, 19-20-602, 19-20-605

reserves, 19-20-501, 19-20-605, 19-20-104

trustees for, 19-20-501

use, restrictions, 19-20-502

guarantee by state, 19-20-104

membership

active, 19-20-302 — 19-20-304, 19-20-402, 19-20-404, 19-20-905

applications, 19-20-201, 19-20-208, 19-20-301

certification, 19-20-208

compulsory, 19-20-103, 19-20-302

consent implied, 19-20-103

eligibility, 19-20-208, 19-20-205, 19-20-302, 19-20-303

RETIREMENT (Continued)

Teachers' Retirement System (Continued)

membership (Continued)

inactive, 19-20-303, 19-20-304, 19-20-603

rights and obligations, 19-20-208

termination, 19-20-304, 19-20-504, 19-20-603

name, 19-20-102

public employees' retirement system, service credits transferred to or from, 19-3-511,

19-20-401, 19-20-409, 19-20-804, 19-20-902

records, 19-20-105, 19-20-201, 19-20-208

reports, financial, 19-20-201

retirement allowances, See benefits

rollover of accumulated contributions, 19-20-414

school districts

employer's contribution, payment, 20-9-501

special education, allowable costs, 20-7-431, 20-7-435

trustees, participation, 20-3-324

social security system, separateness, 19-1-821

state contribution, 19-3-319, 19-20-604

substitute teachers, membership eligibility, 19-20-302, 19-20-417, 19-20-804

superannuation retirement

additional service, purchase — effect, 19-20-804

benefits, 19-20-804

early retirement, benefits, 19-20-802

eligibility, 19-20-801

tax-deferred annuity program, 19-20-603

teachers' retirement board, 2-15-1010, 19-20-101, 20-3-106

actuary, designation by, 19-20-203

administration of system, 19-20-201, 19-20-206, 19-20-702, 19-20-705

creditable service, policy, 19-20-204, See also creditable service

death benefits, 19-20-1001

disability retirement, duties, Title 19, chapter 20, part 9, See disability retirement

early retirement, duties, 19-20-802

employers, information furnished by, 19-20-208

funds, management, Title 19, chapter 20, part 5, See funds

membership, 19-20-201, 19-20-205, 19-20-301, 19-20-302

officers and employees, 19-20-203

per diem and expenses of members, 19-20-202

public employees' retirement system, contributions transferred to, 19-3-511

service credits, qualification, 19-20-409

records and reports, 19-20-201

rulemaking authority, 19-20-106

subpoenas, 19-20-901

superannuation retirement, duties, 19-20-801, 19-20-804

termination, 19-20-504, 19-20-603, 19-20-716

university system optional retirement program, participation in, 19-20-208, 19-20-302

RETIREMENT FUND, See FINANCE**RURAL RESIDENTIAL IMPACT PAYMENTS, 20-9-104, 20-9-508, 20-9-615****S****SANITARY CONDITIONS, Inspection, 20-3-324****SCHOOL DAY, See PUPIL INSTRUCTION DAYS****SCHOOL FACILITIES ADVANCES AND REIMBURSEMENTS**

See also FINANCE

Calculation, 20-9-371

Definition, 20-9-370

Duties of state superintendent, 20-9-346, 20-9-369

Eligibility, 20-9-367

Limitation on bond issue, 20-9-406

SCHOOL FACILITIES ADVANCES AND REIMBURSEMENTS (Continued)

- Permissible uses, 20-9-371
- Requirements for trustees' resolution calling bond election, 20-9-422

SCHOOL LANDS

- See also STATE LANDS
- Income from and for, 20-9-341
- Land Commissioners, Board of — authority, Const., X, 4
- Leases, 20-9-341; Const., X, 5
- Public school fund, 20-9-341, 20-9-601, 20-9-602; Const., VIII, 13; X, 2; X, 3; X, 5
- Sale, 20-9-601
- State lands held in trust for education, Const., X, 11

SCHOOL-RELATED ORGANIZATIONS, AUDITS OF, 2-7-509**SCHOOLS**

- Abuse of pupil or teacher, 20-4-302, 20-4-303
- Accreditation, 20-7-102
 - failure to maintain, 20-9-344
 - instructional programs set forth in, 20-7-111
 - lack of, effect, 20-9-311
 - libraries, requirements, 20-7-202
 - out-of-district attendance agreements, effect, 20-5-321
 - standards, 20-2-121, 20-3-106, 20-6-503, 20-7-101
- Admittance of children, 20-5-101, 20-5-403, 20-5-404; Const., X, 7
- Adult education
 - budget, 20-7-705, 20-7-713
 - curriculum, 20-7-701
 - definitions, 20-7-701
 - fund, adult basic education, 20-7-712
 - fund, adult education, 20-7-704, 20-7-705, 20-7-713
 - levy for, 20-7-705
 - literacy programs, 20-7-714
 - policies, 20-7-703, 20-7-711
 - programs, establishment, 20-3-106, 20-7-702
 - tuition and fees, 20-7-704
- Age requirements, See also AGE REQUIREMENTS
 - admittance, for, 20-1-101, 20-5-101
 - disabilities, child with, 20-7-436
- Aggregate hours, 20-1-301
 - failure to provide minimum number, 20-1-301
- Attendance
 - absences, notice to parents when, 44-2-507
 - administration of provisions, 20-3-324
 - average number belonging (ANB), calculation, 20-9-311, See AVERAGE NUMBER BELONGING (ANB)
 - boundaries, See DISTRICTS AND TRUSTEES, Boundaries, generally; Elementary districts; High school districts
 - compulsory, 20-4-402, 20-5-103, 20-5-105, 20-5-106, 20-5-108
 - enforcement, 20-5-105, 20-5-106
 - excuses, 20-5-102, 20-5-103, 20-5-106, 44-2-507
 - home schools, 20-5-109, 20-5-111
 - immunization requirements, Title 20, chapter 5, part 4, See IMMUNIZATION REQUIREMENTS
 - incapacitated children, 20-5-107
 - Indian children, 20-5-108
 - indigent children, 20-5-107
 - nonpublic schools, records, 20-5-109
 - out-of-district attendance agreements, 20-3-210, 20-5-314, 20-5-320 — 20-5-324, See also SPECIAL EDUCATION; TUITION
 - reciprocal attendance agreements, 20-5-314
 - records, 20-1-213
 - religious instruction released time programs, effect, 20-1-308
 - reports, 20-4-301, 20-4-402, 20-9-311

SCHOOLS (Continued)

Attendance (Continued)

- special education, See SPECIAL EDUCATION
- transportation contract payments, use of records, 20-10-125
- truancy, 20-4-302, 20-5-106
- tuition, See SPECIAL EDUCATION; TUITION
- violation, 20-5-106

Attendance officers, 20-3-206, 20-5-104 — 20-5-107

Audiological services, 20-7-403, 26-1-801, 26-1-806

Breastfeeding in, 39-2-215 — 39-2-217

Closure, 20-3-324, 20-6-505, 20-6-509

- emergency, 20-9-801, 20-9-802, 20-9-805, 20-9-806

Commemorative exercises held when, 20-1-306

Cooperatives, full service education

- audits, Title 2, chapter 7, part 5, See AUDITS, Local government entities
- contracts, 20-7-451, 20-7-452, 20-7-454
- creation, authorization, 20-7-451
- expenditures, 20-7-451
- funding, 20-7-452, 20-7-455, 20-7-457
- funds, establishment, 20-7-457
- management board, 20-7-452, 20-7-455
- property, 20-7-452
- special education purposes, for, 20-4-202, 20-7-452, 20-7-457
- teachers employed by, tenure, 20-7-456

Corporal punishment or physical restraint of pupils, 20-4-302

Correspondence

- schools, Title 20, chapter 30, See POSTSECONDARY EDUCATIONAL INSTITUTIONS
- study, supervised, 20-5-102, 20-7-116, 20-10-121, 20-10-142, 20-10-144

Counselors

- gifted and talented children programs, 20-7-901
- K-12 specialist, 20-4-131
- privileged communications, 26-1-809
- special education, allowable costs, 20-7-431

County high schools, 20-6-101, See also High schools; Junior high schools

high school district, as, 20-6-101

principals, See PRINCIPALS

tuition, See TUITION

unification, 20-3-205, 20-6-312, 20-6-313

Crossing guards, 20-1-214, 20-3-106, 61-8-502

Curriculum

- adult education, 20-7-701
- assistance with, 20-3-106, 20-7-114
- correspondence study, 20-5-102, 20-7-116, 20-10-121, 20-10-142, 20-10-144
- establishment and maintenance, 20-3-324
- guides, file and publication, 20-3-106, 20-7-113
- home schools, 20-5-109, 20-5-111
- instructional programs, 20-4-402, 20-7-111
- music instruction, private, 20-7-115
- nonpublic schools, 20-5-109
- secondary education, equivalency of completion, 20-2-121, 20-7-131

Deaf and Blind, School for, Title 20, chapter 8, part 1, See DEAF AND BLIND, MONTANA SCHOOL FOR THE

Definitions, 20-1-101, 20-3-322, 20-4-302, 20-5-320, 20-5-402, 20-6-501, 20-6-701, 20-7-401, 20-7-436, 20-7-501, 20-7-701, 20-7-901

Disabilities, persons with, See SPECIAL EDUCATION

Disaster Drills, 20-1-401 — 20-1-407

Discriminatory practices, See DISCRIMINATION

Disturbance, willful - penalty, 20-1-206

Donations to, 20-9-601

Driver education, See TRAFFIC EDUCATION

Drug Abuse Resistance Education (D.A.R.E.) Program, Title 44, chapter 2, part 7

Drugs, dangerous — criminal sale on or near school property, 45-9-109

SCHOOLS (Continued)

Elections, See ELECTIONS

Elementary schools, 20-6-501, See also Kindergartens; Preschool programs; Tuition
 accreditation, 20-7-102, See Accreditation
 opening or reopening, 20-6-502
 relocation within district, 20-6-218

Emergencies

bids for sites, facilities, or supplies - requirements waived, 20-9-204
 closure of schools, Title 20, chapter 9, part 8
 disaster drills, 20-1-401 — 20-1-407
 hours in school week, reduction, 20-1-301, 20-1-302
 Saturday, pupil instruction on, 20-1-303, 20-3-324
 school trustee meetings, effect on, 20-3-322
 trustees power to reschedule, 20-9-806
 unforeseen emergency, definition, 20-3-322

Enrollment

compulsory, 20-5-102
 increases, See AVERAGE NUMBER BELONGING (ANB); BUDGETS AND BUDGET
 SYSTEM, Budget amendments
 new students, school records and proof of identity required, 44-2-511
 nonenrollment, 20-5-106
 nonpublic nonaccredited school, from - assessment policy, 20-3-324, 20-5-110

Equal opportunity in education, Const., X, 1; X, 7

External diploma, 20-7-131

Extracurricular functions, money from, See FINANCE, Extracurricular fund

Facilities, See SITES AND FACILITIES

Financial administration, See FINANCE

Fines

abuse of pupils or teachers, 20-4-302, 20-4-303
 attendance violations, 20-5-106
 corporal punishment or physical restraint of pupils, 20-4-302
 disposition, 20-9-331, 20-9-332
 disturbance of school, 20-1-206
 fraternities, participation in, 20-5-203
 principals, for violations, 20-1-203
 school law violations generally, 20-1-207
 secret organizations, participation in, 20-5-203
 sites and facilities, 20-6-624, 20-6-636
 textbook dealers, lack of license, 20-7-606

Firearms

carrying in prohibited place, 45-8-328, 45-8-351, 45-8-361
 safety education, 20-7-132
 use by children under age 14 prohibited, 45-8-344, 45-8-345

Fire drills, 20-1-401 - 20-1-402, 20-1-404

Fire procedures, 20-1-405

Fire protection and safety regulations, See FIRE SAFETY IN PUBLIC BUILDINGS

Fire services training school, Title 20, chapter 31

Five-year-old schooling, See Kindergartens

Flag, American - display, 20-3-324

Food services, 20-1-101

administrative review, 20-3-106, 20-10-202
 audits, 20-3-106, 20-10-202
 commodities, 20-3-106, 20-10-202 — 20-10-204
 establishment, operation, and expansion, 20-10-201, 20-10-204
 federal funds, 20-3-106, 20-10-201, 20-10-205
 fund, See FINANCE, School food services fund
 gifts for, 20-10-201, 20-10-204
 indigent children, 20-3-205, 20-10-205
 inspections, 20-3-106, 20-10-202
 institutional schools, inclusion, 20-10-206
 personnel, 20-3-324

SCHOOLS (Continued)

- Food services (Continued)
 - records and reports, 20-3-106, 20-10-202
 - wild animal meat donated to, when, 87-1-226
- Forms distributed to, 20-3-105
- Fraternities prohibited, 20-5-203
- Free education, Const., X, 1
- General education development (GED), 20-7-131
- Gifted and talented children programs, 20-2-121, 20-7-901 — 20-7-904
- Goal of education, Const., X, 1
- Governance generally, 20-3-324
- Health
 - immunization, Title 20, chapter 5, part 4, IMMUNIZATION REQUIREMENTS
 - inspections, 50-1-203
 - programs, 50-1-202
 - pupils, conditions and records, 20-3-324
 - quarantine measures, 50-1-204
 - regulations, 50-1-206
 - state health plan, 50-1-201
- High schools, 20-6-501, See also County high schools; Junior high schools
 - accreditation, 20-7-102, See Accreditation
 - opening or reopening, 20-6-503
- Holidays, 20-1-305 — 20-1-307, 20-4-201, See also HOLIDAYS
- Homeless children, admittance, 20-5-101
- Home schools, 20-5-102, 20-5-109, 20-5-111, See also PRIVATE SCHOOLS
- Home study, supervised, 20-5-102, 20-7-116, 20-10-121, 20-10-142, 20-10-144
- Immunization requirements, 20-5-403
 - affidavit, 20-5-405
 - attendance, commencement, 20-5-403, 20-5-404, 20-5-408
 - definitions, 20-5-402
 - enforcement, 20-5-408, 20-5-410
 - evidence, 20-5-403, 20-5-406, 20-5-409
 - exemptions, 20-5-403, 20-5-405, 20-5-409
 - failure to comply, 20-5-405, 20-5-409, 20-5-410
 - forms, 20-5-405, 20-5-406, 20-5-408
 - home schools, 20-5-109, 20-5-111
 - immunizing agents, approval, 20-5-403, 20-5-409
 - injunction, 20-5-409
 - noncompliance, 20-5-409, 20-5-410
 - nonpublic schools, records, 20-5-109
 - penalty, 20-5-410
 - postsecondary schools, 20-5-402, 20-5-403, 20-5-408
 - records, 20-5-109, 20-5-403, 20-5-405, 20-5-406
 - reports, 20-5-408
 - rulemaking, 20-5-407
 - transfer students, records, 20-5-403
- Indians
 - children, attendance, 20-5-108
 - culture, preservation, Const., X, 1, See TEACHERS, Indian studies
- Indigent children, 20-3-205, 20-5-107, 20-10-205
- Industrial arts programs, funding, 20-7-305, 20-7-306
- Insurance, See INSURANCE
- Interstate school agreements, joint, 20-9-705
- Isolation, 20-3-106, 20-3-205, 20-3-324, 20-9-302, 20-9-303
- Junior high schools, 20-6-501, See also County high schools; High schools
 - accreditation, 20-7-102, See Accreditation
 - closure, 20-6-505, 20-6-509
 - opening, 20-6-504 — 20-6-506
- Kindergartens, 20-7-117, See also Preschool programs
 - elementary schools, inclusion, 20-6-501, 20-7-117
 - hours of instruction, 20-1-302

SCHOOLS (Continued)

- Kindergartens (Continued)
 - immunization requirements, Title 20, chapter 5, part 4
 - out-of-district attendance agreements, 20-5-320
- Kindergarten through grade 12 system, 20-6-508
- Laboratory fees charged when, 20-9-214
- Lease-purchase agreements, 20-6-609
- Librarians, 20-4-131
- Literacy programs, adult, 20-7-714
- Meetings, penalty for willful disturbance, 20-1-206
- Middle schools, 20-6-501, See also Elementary schools
 - accreditation, 20-7-102, See Accreditation
 - opening, 20-6-507
- Miscellaneous provisions, Title 20, chapter 1, part 2
- Motor vehicle traffic laws, See TRAFFIC EDUCATION
- Music instruction, private, 20-7-115
- Nonpublic nonaccredited school, placement of child in public school — assessment policy, 20-3-324, 20-5-110
- Nonsmoking areas, designation, 50-40-201, See SMOKING IN PUBLIC PLACES
- Nurses, 19-20-302, 20-3-324, 20-7-431, 26-1-801, 26-1-809, 41-3-201, 50-1-202
- Obscene material, public display or dissemination to minors — nonapplicability of provisions when, 45-8-206
- Opening or reopening, 20-3-324
 - elementary schools, 20-3-106, 20-3-205, 20-6-218, 20-6-502
 - high schools, 20-3-106, 20-3-205, 20-6-503
 - junior high schools, 20-3-106, 20-3-205, 20-3-362, 20-6-504 — 20-6-506
 - middle schools, 20-6-507
- Operation generally, 20-3-324
- Parent-teacher conferences, 20-1-304
- Parochial, See PRIVATE SCHOOLS
- P.I.R. days, 20-1-304, 20-2-121, 20-3-106
- Pledge of Allegiance, 20-7-133
- Prayer in, 20-7-112
- Preschool programs, 20-7-117, 20-7-411, See also Kindergartens
 - elementary schools, inclusion, 20-6-501, 20-7-117
 - hours of instruction, 20-1-301, 20-1-302
 - immunization requirements, Title 20, chapter 5, part 4, See IMMUNIZATION REQUIREMENTS
 - special education, 20-7-411
- Principals, 20-1-101, See also TEACHERS, generally
 - certification, See TEACHERS, Certification
 - county high schools, 20-3-324, 20-4-401, 20-4-402
 - district superintendent, duties as — when, 20-4-403
 - employment or dismissal, 20-3-324, 20-6-410
 - finances for violations, 20-1-203
 - K-12 districts, 20-6-711
 - library books, selection, 20-7-204
 - misappropriation of funds, 20-1-203
 - prayer to open school day, 20-7-112
 - pupils, 20-4-302, 20-5-201
 - pupils - suspension, 20-4-302, 20-4-403, 20-5-202
 - retirement, Title 19, chapter 20, See RETIREMENT, Teachers' Retirement System
 - special education assistance, 20-7-403
 - successor, delivering materials to, 20-1-203
 - teachers, duties, 20-3-324, 20-4-204, 20-4-207, 20-4-301
 - textbooks selected by, 20-7-602
- Psychologists
 - gifted and talented children programs, 20-7-901
 - privileged communications, 26-1-801, 26-1-807, 26-1-809
 - psychology teachers, privileged communications, 26-1-801, 26-1-808
 - special education, allowable costs, 20-7-431
 - "specialist" defined, 20-4-131

SCHOOLS (Continued)

- Psychologists (Continued)
 - teachers' retirement system, membership required, 19-20-302, See RETIREMENT, Teachers'
- Retirement System
- Public school fund, See FINANCE, Public school fund
- Pupil instruction days
 - average number belonging (ANB), calculation, 20-9-311, See AVERAGE NUMBER
- BELONGING (ANB)
 - commemorative exercises held when, 20-1-306
 - disaster drills, 20-1-401 — 20-1-407
 - emergencies, closures by — effect, 20-9-806
 - graduating seniors, requirement, 20-1-301
 - holidays, 20-1-305, 20-1-307
 - home schools, number required, 20-5-109, 20-5-111
 - hours required, daily, weekly and yearly, 20-1-301, 20-1-302, 20-2-121
 - minimum number, 20-1-304, 20-5-109, See also EMERGENCIES, Closure of schools
 - nonpublic schools, number required, 20-5-109
 - religious instruction released time programs, 20-1-308
 - Saturday, on - when, 20-1-303, 20-2-121, 20-3-324, 20-7-503
 - transportation reimbursements, state — computation, 20-10-145
 - trustees to set, 20-1-301
- Pupil-instruction-related days, 20-1-304, 20-2-121, 20-9-311
- Religion, Const., X, 7
 - Bible or other religious material, inclusion in libraries, 20-7-112
 - enrollment, 20-5-102
 - immunization requirements, exemption when, 20-5-405
 - prayer in schools, 20-7-112
 - religious instruction, 20-1-308; Const., X, 7
 - sectarian publications prohibited, 20-7-112
- Reports distributed to, 20-3-105
- Sanitary conditions, inspection, 20-3-324
- School laws, 20-1-207, 20-3-105
- Secondary education, equivalency of completion, 20-2-121, 20-7-131
- Secret organizations prohibited, 20-5-203
- Sectarian publications prohibited, 20-7-112
- Speed limits near, alteration - authority, 61-8-310
- Sports officials - assault upon, criminal offense, 45-5-211
- Supervision, Const., X, 9
 - county high school principal, 20-4-402
 - county superintendent of schools, 20-3-205, 20-3-207
 - district superintendent, 20-4-402
 - principals, 20-4-403
 - school trustees, 20-3-207; Const., X, 8
 - superintendent of public instruction, 20-3-106
- Telecommunications network (METNET), 20-9-343
- Textbook dealers, 20-1-101, 20-3-106, 20-7-604 — 20-7-608, 49-3-204
 - complaints against, 20-3-205, 20-7-605
- Textbooks, 20-1-101, 20-3-324, 20-7-601
 - damage policy, 20-7-601
 - free to pupils, to be, 20-7-601
 - home schools, 20-5-111
 - purchase, 20-7-601, 20-7-603
 - selection and adoption, 20-3-205, 20-4-402, 20-7-602, 20-7-603
 - sold to pupils when, 20-7-601
 - special education budget, allowable costs, 20-7-431
- Tobacco-free areas, designation, 50-40-201
- Types, enumeration, 20-6-501
- Violations, 20-1-207, 41-3-207
- Visitations, 20-3-207, 20-3-324
- Vocational education, K-12, Title 20, chapter 7, part 3
- Voting program for youth, Title 13, chapter 22, part 1

SECONDARY EDUCATION, Equivalency of completion, 20-2-121, 20-7-131

SECRET ORGANIZATIONS PROHIBITED, 20-5-203

SECTARIAN PUBLICATIONS PROHIBITED, 20-7-112

SITES AND FACILITIES

See also **PROPERTY**

Acquisition, 20-3-324, 20-6-603

Alternative education, 41-5-1801

Approval, 20-6-603, 20-6-621

Architectural services, 18-2-113

contracts, 20-6-631, 20-6-635, 20-6-636

fees, 20-6-633, 20-6-636

proposals, tentative and final, 20-6-634

City or county, approval and review of plans and specifications, 20-6-622

Construction, 18-2-103, 18-2-201, 18-2-313, 18-2-401, 18-2-403, 18-2-432, 20-9-225 — 20-9-227

Contractors, bonding requirements - waiver when, 18-2-201

Contracts

amount withheld when, 18-2-404

approval, 18-2-404

architectural services, 20-6-631, 20-6-635, 20-6-636

bid requirements, conflict of interest, 20-9-204

bids, preference to Montana labor, 18-2-403

bids, requirements, 20-9-204, 20-9-205

breach, 20-6-636

discrimination, 18-2-403, 49-3-207

division to circumvent bid requirements prohibited, 20-9-205

federal funds, involving, 18-2-313, 18-2-403

interest assessment on overdue accounts, 20-9-225 — 20-9-227

letting, 20-6-606, 20-9-204

payments, 20-6-624

preference to Montana labor, 18-2-403

required when, 20-9-204

Cooperatives, full service education - contracts, use, 20-7-451

Disposal, 20-3-324, 20-6-603, 20-6-604

Elections, signature gathering for initiative petitions, 13-13-122

Firearms, carrying in prohibited place, 45-8-328, 45-8-351, 45-8-361

Health regulations, 50-1-206

Historical writings - display, 1-1-520

Home schools, 20-5-109, 20-5-111

Interest assessment on overdue accounts, 20-9-225 — 20-9-227

Interstate agreements for, 20-9-705

Leases, 20-6-607

authority for, 20-6-625

cooperatives, full service education - contracts, 20-7-455

interest assessment on overdue accounts, 20-9-225 — 20-9-227

school lands, income from, 20-9-341

state lands, 20-6-621, 20-9-341

Maintenance, 20-9-204

Nonpublic schools, 20-5-109

Obligations, issuance for, 20-9-471

Plans and specifications, 20-3-106, 20-6-622, 20-6-624

Recreation programs, public - use, 20-7-805

Relocation of elementary school within district, 20-6-218

Renting, 20-6-607

Repair, 20-9-204

Requirements, 20-6-621

Sanitary inspections, 50-1-203

Selection, 20-6-621

State lands, 20-6-621

Tobacco-free areas, designation, 50-40-201

Trustees' authority generally, 20-3-324, 20-6-603, 20-9-204

SMOKING IN PUBLIC PLACES — PROHIBITION

- Definitions, 50-40-103
- Enclosed public places, 50-40-104
- Enforcement, 50-40-108
- Local government buildings, 50-40-201
- Montana Clean Indoor Air Act of 1979, 50-40-101
- Penalties, 50-40-115
- Purpose of provisions, 50-40-102

SOCIAL SECURITY

- Administration, 19-1-201, 19-1-202
- Contribution account
 - establishment, 19-1-601
 - interest and income from, 19-1-202, 19-1-602, 19-1-701
 - management, 19-1-602
 - payments from, 19-1-603, 19-1-604
 - payments to, See Contributions
 - sources of funds, 19-1-503, 19-1-701
 - teachers' contributions, 19-1-813
 - use, limitations, 19-1-603
- Contributions, 19-1-701
 - delinquent payments, collection, 19-1-706
 - federal-state agreement provisions, 19-1-402
 - higher education, institutions of — budget requirements, 19-1-825
 - legislative appropriations, 19-1-701, 19-1-825
 - payroll deductions for, 19-1-702, 19-1-705, 19-1-813, 19-1-825
 - political subdivisions, 19-1-704 — 19-1-706
 - refunds, 19-1-603, 19-1-702
 - school districts, 19-1-813, 19-1-814, 20-9-501
 - state departments, budget requirements, 19-1-703
 - state employees, 19-1-702
 - teachers, 19-1-813, 19-1-825
- Definitions, 19-1-102
- Exclusions, 19-1-103
- Federal-state agreements
 - authority for, 19-1-401, 19-1-824
 - contents, 19-1-402
 - payments concerning, 19-1-603, 19-1-604
 - plans for political subdivision employees, conformity, 19-1-503
- Higher education, institutions of, See Teachers' participation in
- Medicare, group benefit provisions
- Policy, declaration, 19-1-101
- Political subdivision employees, plans for
 - approval, 19-1-502
 - contributions, 19-1-704 — 19-1-706
 - delinquent payments, collection, 19-1-706
 - requirements, 19-1-503
 - submission, 19-1-501
- Public Employees' Retirement Board
 - contribution account, powers, 19-1-602
 - contributions, adjustment or refunds, 19-1-702
 - federal-state agreements, 19-1-401, 19-1-402
 - political subdivision employees' plans, 19-1-501 — 19-1-503
 - rulemaking authority, 19-1-201
 - "state agency" defined, 19-1-102
- Public Employees' Retirement Division, administration costs, 19-1-202
- Referendums
 - authorization, 19-1-301
 - certification, 19-1-304, 19-1-811, 19-1-823
 - conduct, 19-1-302
 - higher education, institutions of, 19-1-822, 19-1-823

SOCIAL SECURITY

Referendums (Continued)

- notice, 19-1-303
- school districts, by, 19-1-811

Retirement systems, separateness, 19-1-101, 19-1-104, 19-1-802, 19-1-821

Special education, allowable costs, 20-7-431, 20-7-435, See also Teachers' participation in

Teachers' participation in

- conflict of laws, 19-1-801
- contributions, collection, 19-1-813, 19-1-814, 19-1-825, 20-9-501
- eligibility, 19-1-812
- federal laws, effect of changes in, 19-1-826
- federal-state agreement, 19-1-824
- multiple systems, participation in, 19-1-802
- purpose of provisions, 19-1-801
- referendum for, 19-1-811, 19-1-815, 19-1-822, 19-1-823
- reporting entities, merger, 19-1-815
- retirement system, separateness, 19-1-802, 19-1-821
- rights under other laws, effect, 19-1-802

SPECIAL EDUCATION

Accounting, 20-7-431

Agency contracts for, 20-7-412

Allowable cost payments, 20-3-106, 20-7-414, 20-7-431, 20-7-435, 20-7-457, 20-9-141, 20-9-303, 20-9-306, 20-9-321, 20-9-347, 20-9-366 — 20-9-368

Allowable costs, 20-7-419, 20-7-431, 20-7-435, 20-7-443, 20-9-321

Alternative education site, 41-5-1801

Appropriations, 20-7-431, 20-7-435, 20-9-303, 20-9-307

Approval requirement, 20-7-414

Attendance, 20-7-403, 20-7-420 — 20-7-422, 20-7-424, 20-7-435

Audiological services, 20-7-403

Average number belonging (ANB), 20-9-311, 20-9-321

Block grants, 20-9-321

Budget, 20-7-435, 20-7-443, 20-9-303, 20-9-501

Classes, 20-7-403, 20-7-411, 20-7-414, 20-7-443

Controversy appeals, 20-3-211

Cooperatives, 20-7-431, 20-7-452, 20-7-457, 20-9-321

- audits or financial reports, Title 2, chapter 7, part 5, See AUDITS

- retirement fund budget and levy, 20-9-501

- teachers employed by, tenure, 20-4-202

- teachers' retirement system, employees' membership, 19-20-302, See RETIREMENT,

- Teachers' Retirement System

Definitions, 20-7-401, 20-7-436

Determination of children in need, 20-7-403, 20-7-414

Expenditures, accounting, 20-7-431, 20-9-303

Financial responsibility, residency requirements, 20-7-420, 20-7-421

General fund budget, 20-9-308

Individual programs, 20-7-412

In-state children's psychiatric hospitals or residential facilities, 20-7-403, 20-7-419, 20-7-420, 20-7-435, 20-7-436

Interlocal cooperative agreements, Title 7, chapter 11, part 1, See INTERLOCAL

COOPERATION

Joint boards, 20-3-362, 20-7-431, 20-7-457, 20-9-321

Out-of-district attendance, 20-5-321, 20-5-323, 20-5-324, 20-7-421

Out-of-state schools or residential facilities, 20-7-403, 20-7-419, 20-7-420, 20-7-422

Parents, 20-7-403

Policies, 20-2-121, 20-7-402, 20-7-403

Preschool children, 20-7-411, 20-10-101

Programs, 20-7-403

- approval, 20-7-414

- cooperative, 20-7-411

- establishment, 20-3-324, 20-7-411, 20-7-412, 20-7-415

- funding, 20-7-414, 20-7-415

SPECIAL EDUCATION (Continued)

Programs (Continued)

individual, 20-7-412

supervision, 20-3-106, 20-7-403

under-6-years-old, for, 20-7-411, 20-7-443

Regional services, 20-7-411

Residency requirements for financial responsibility, 20-7-420, 20-7-421

Retirement fund budget and levy, 20-9-501

Rules, 20-7-419, 20-9-321

State agencies, cooperation and responsibilities, 20-7-404, 20-7-420, 20-7-422

Supervision, 20-3-106, 20-7-403

Supervisor for, 20-3-103

Surrogate parent, 20-7-401 — 20-7-403, 20-7-461 — 20-7-463

Teachers, 20-4-202, 20-7-403, 20-7-431

Transportation, 20-7-419 — 20-7-421, 20-7-424, 20-7-431, 20-7-441 — 20-7-443, 20-10-144, 20-10-146

Tuition, 20-7-419 — 20-7-421, 20-7-424, 20-7-441

out-of-district attendance agreements, 20-5-321, 20-5-323, 20-5-324

out-of-state, state agency placement, 20-5-321, 20-5-323, 20-5-324, 20-7-403, 20-7-420, 20-7-422

Type of, determination, 20-7-403, 20-7-414

Under-6-years-old, programs or classes, 20-7-443

SPEECH-LANGUAGE PATHOLOGISTS OR AUDIOLOGISTS, 37-15-101 — 37-15-103, 37-15-301

Privileged communications, 26-1-801, 26-1-806

SPEED LIMITS NEAR SCHOOLS, Alteration, authority, 61-8-310**SPORTS OFFICIALS**, Assault upon, criminal offense, 45-5-211**STATE BOARD OF EDUCATION**, Const., X, 9**STATE LIBRARY COMMISSION**, See LIBRARIES**STUDENT ASSESSMENT**, 20-2-121, 20-3-106, 20-3-324, 20-5-110**STUDENT FINANCIAL INSTITUTIONS**, 20-3-324, 32-1-115**STUDENT TEACHERS**, 2-2-104, 20-4-101, See also TEACHERS**STUDENTS**

Absences, 20-4-301, 20-4-402, 20-5-103, 44-2-507

Abuse of, 20-4-302

Age requirements, 20-1-101, 20-5-101, 20-7-411

Assessment, 20-2-121, 20-3-106, 20-3-324, 20-5-110

Caretaker relative, 40-6-501, 40-6-502, 40-6-601, 40-6-602

Confidential communications, 26-1-801, 26-1-808, 26-1-809, 44-2-511

Corporal punishment or physical restraint, 20-4-302

Definition, pupil, 20-1-101

Discipline, 20-4-302, 20-5-201

Discrimination prohibited, Const., X, 7

Dual credit, 20-9-706

Duties, 20-5-201

Enrollment by caretaker relative, 40-6-601, 40-6-602

Expulsion, 20-5-201, 20-5-202

Fees, 20-9-214

Fraternities prohibited, 20-5-203

Governance generally, 20-3-324

Grades, diploma, or transcript withheld when, 20-5-201

Graduation, participation denied when, 20-5-201

Gun-free school policy, 20-5-202

Health conditions and records, 20-3-324

Homeless children, 20-5-101

Identity, proof of — required when, 44-2-511

Immunization requirements, Title 20, chapter 5, part 4, See IMMUNIZATION REQUIREMENTS

Incapacitated, 20-5-107

STUDENTS (Continued)

Indigent, 20-5-107; See also INDIGENT CHILDREN
 Kindergarten, 20-7-117
 Medical authorization affidavit by caretaker relative, 40-6-501
 Medication, diabetes, 20-5-412, 20-5-413
 Minors, 41-1-101
 Missing children, list of - provided to, 44-2-506
 New students, school records and proof of identity required, 20-1-213, 44-2-511
 Nonpublic nonaccredited school, from — assessment policy, 20-3-324, 20-5-110
 Parental authority ceases, 40-6-234
 Physical restraint, 20-4-302
 Placement, 20-5-110
 Privileged communications, 26-1-801, 26-1-808, 26-1-809
 Property, defacing or damaging — liability, 20-5-201
 Public Employees' Retirement System, applicability, 19-3-403
 Punishment, 20-4-302, 20-5-201
 Qualifications, 20-5-101
 Records, 20-1-213, 44-2-511
 Religious tests for admission prohibited, Const., X, 7
 Sanctions, 20-5-201
 School activities, participation denied when, 20-5-201
 Secret organizations prohibited, 20-5-203
 Suicide prevention, 53-21-1101 — 53-21-1103
 Supervision, 20-4-402
 Suspension, 20-4-302, 20-4-402, 20-5-103, 20-5-201, 20-5-202
 Teachers' duty to, 20-4-301
 Transportation, See TRANSPORTATION
 Truancy or incorrigibility, 20-4-302, 20-5-106
 Vehicles driving through groups of, 61-8-502

SUICIDE PREVENTION PROGRAM, 53-21-1101 — 53-21-1103

SUMMER YOUTH EMPLOYMENT PROGRAM, See MONTANA SUMMER YOUTH EMPLOYMENT PROGRAM

SUPERINTENDENT OF PUBLIC INSTRUCTION

See also generally PUBLIC OFFICERS OR EMPLOYEES
 Absence, 20-3-103
 Administrative powers and duties, 20-3-105
 Adult basic education programs, distribution of funds, 20-7-712
 Adult education programs, duties, 20-3-106, 20-7-705
 Affidavit required by, when, 20-3-107
 Age, 20-3-101; Const., VI, 3
 Agents, acting as — prohibited, 20-1-201
 Appeals, See Controversy appeals
 Appointment by governor, when, Const., VI, 6
 Audiovisual and media library account, 20-7-201
 Audit reports issued to, 20-9-203
 Candidacy for other office, Const., VI, 5
 Career and vocational/technical education programs, funding, 20-7-305, 20-7-306
 Citizenship, Const., VI, 3
 Controversy appeals
 county superintendent of schools, decisions by, 20-3-107, 20-3-210, 20-4-208
 county transportation committee decisions, 20-3-107, 20-10-132
 joint boards of trustees, proration of expenses, 20-3-362
 out-of-district attendance agreements, 20-5-322
 Deaf and Blind, Montana School for the - liaison, 20-8-113
 Death, Const., VI, 6
 Defined, 20-1-101
 Deputy, 20-3-103
 Disability, Const., VI, 6, See also PUBLIC OFFICERS OR EMPLOYEES, Vacancy in office
 Disclose assessment data, 20-3-106
 Division of Resources and Assessment, 20-3-108

SUPERINTENDENT OF PUBLIC INSTRUCTION (Continued)

- Educational media
 - division of resources and assessment, 20-3-108
 - library, 20-2-121, 20-3-106, 20-7-201
 - supervisor, 20-3-104
- Education, State Board of - duties, 20-2-101
- Election of, 20-3-101; Const., VI, 1; VI, 2; VI, 3; VI, 6
- Executive branch officer, Const., VI, 1
- Federal money, acceptance and expenditure, 20-3-106, 20-9-507, 20-9-603, 20-9-703, 20-9-704, 20-10-201
- Fine for violations, 20-1-201
- Fiscal notes, preparation when, 1-2-113, 20-7-101
- Gifted and talented children programs, duties, 20-7-903, 20-7-904
- Gifts, acceptance, 20-10-201
- Health programs, 50-1-202
- Highway traffic safety program, responsibility, 61-2-103
- Immunity from suit when, 20-4-110
- Impeachment, subject to, Const., V, 13, See PUBLIC OFFICERS OR EMPLOYEES, Vacancy in office
- Interlocal cooperative agreements, authorization, 20-3-106, 20-9-703, 20-9-704
- Interstate Agreement on Qualification of Educational Personnel, designated official for and duties, 20-4-122, 20-4-123
- Land Commissioners, Board of - member or presiding officer, Const., X, 4
- Library of visual, aural, and other educational media - establishment and maintenance, 20-2-121, 20-3-106, 20-7-201
- Missing children, list of - provided to and distribution, 44-2-503, 44-2-506
- Office, creation or location, 2-15-701; Const., VI, 1
- Powers and duties, 20-3-105, 20-3-106; Const., VI, 1; VI, 4
- Prohibited practices, 20-1-201
- Public Education, Board of - member of and duties, 2-15-1507, 20-2-111, 20-2-115, 20-9-346, 20-10-201; Const., X, 9
- Public office, may not hold other public office, Const., VI, 5
- Qualifications, 20-3-101; Const., VI, 3
- Records, 20-7-431, 20-9-346, 20-9-369
 - official, 20-3-105
- Regents of Higher Education, Board of - member of and duties, 2-15-1505
- Report forms supplied by, 20-3-106
- Reports, 20-3-105
 - budget and program planning, office of - to, 20-9-346
 - county treasurer and county superintendent of schools - to, 20-9-347
 - guaranteed tax base aid, 20-9-369
 - public education, board of to, 20-9-346, 20-10-201
 - required by, 20-3-324
 - state advance or reimbursement for school facilities, 20-9-369, 20-9-422
- Residence, Const., VI, 1; VI, 3
- Resignation, Const., VI, 6, See also PUBLIC OFFICERS OR EMPLOYEES, Vacancy in office
- Retirement, Title 19, chapter 20, See RETIREMENT, Teachers' Retirement System
- Salary, Const., VI, 5
- School districts and trustees
 - audits and financial review, 2-7-503, 2-7-513 — 2-7-515, 20-9-203, See also AUDITS, Local government entities, 20-6-215
 - budget amendment provisions, 20-3-106
 - elementary, transfer of territory, 20-6-105
 - financial reports by trustees, 20-9-213
 - high school, 20-3-106, 20-6-320, 20-6-322
 - joint boards of trustees, proration of costs, 20-3-106, 20-3-362
 - joint districts, 20-3-106, 20-9-151
 - K-12, attachment of elementary to high school district — copy of order for, 20-6-701
 - out-of-district attendance agreements, 20-5-320, 20-5-322 — 20-5-324
 - policies, enforcement by trustees, 20-3-323, 20-3-324
 - reciprocal attendance agreements, 20-5-314
 - report forms furnished to, 20-3-106, 20-9-213

SUPERINTENDENT OF PUBLIC INSTRUCTION (Continued)

School districts and trustees (Continued)

- reports by trustees, 20-3-324
- single-member trustee districts, plan for, 20-3-337
- supervision, 20-3-106

School elections, duties, 20-20-102, 20-20-104, 20-20-108

School finance

- administration, supervision, 20-3-106, 20-9-201
- annual reports, 20-9-211
- apportionment of money, 20-3-106, 20-9-212, 20-9-335, 20-9-346, 20-9-347
- average number belonging, 20-3-106, 20-6-502, 20-9-311, 20-9-313, 20-9-314
- BASE aid, 20-3-106, 20-5-324, 20-9-344, 20-9-346, 20-9-347, 20-9-351
- budgets, 20-3-106, 20-9-102, 20-9-103
- budget amendments, 20-3-106, 20-9-162, 20-9-163, 20-9-165, 20-9-166
 - final, filed with, 20-9-134, 20-9-344
 - joint districts, 20-3-106, 20-9-151
- clearing accounts, rules for use, 20-9-220
- county equalization aid, 20-1-301, 20-9-331, 20-9-333, 20-9-346, 20-9-361
- county money, reports, 20-9-212
- extracurricular fund, accounting system for, 20-9-504
- federal money, acceptance and expenditure, 20-3-106, 20-9-507, 20-9-603, 20-9-703, 20-9-704, 20-10-201
- funds, 20-9-201, 20-9-213
- guaranteed tax base aid, 20-3-106, 20-9-351, 20-9-369
- isolated schools, applications, 20-3-106, 20-9-302
- joint districts, administration responsibilities, 20-9-202
- nonoperating budget form, promulgation and distribution, 20-9-506
- personal property ordered but not paid for, forms for recording, 20-9-209
- state equalization aid, 20-1-301, 20-9-343, 20-9-346, 20-9-361, 20-9-805
- statement on fund cash balances and bond information, format, 20-9-121

Schools generally

- accreditation standards, recommendations and evaluations, 20-3-106, 20-7-101, 20-7-102
- building plans and specifications, review, 20-3-106, 20-6-622
- curriculum, 20-3-106, 20-7-113, 20-7-114
- food services, duties, 20-3-106, 20-10-201 — 20-10-204, 20-10-206
- instructional assistance, 20-3-106, 20-7-114
- laws, publication and supplements, 20-3-105
- library information reports requested by, 20-7-205
- opening or reopening, 20-3-106, 20-6-502 — 20-6-505, 20-6-507
- personal property ordered but not paid for, forms for recording, 20-9-209
- pupil instruction days, duties, 20-1-301 — 20-1-303
- supervision, 20-3-106
- tuition, 20-3-106, 20-5-314, 20-5-323

School transportation

- buses, policies regarding, 20-10-111
- contracts, copies to and forms for, 20-10-124, 20-10-143
- controversies, 20-10-112, 20-10-132
- direction for, 20-10-121
- mileage distances, controversy, 20-10-106
- reimbursements, 20-10-112, 20-10-142, 20-10-145
- residence of transportee, controversy, 20-10-105
- rules prescribed by, 20-3-106, 20-10-104, 20-10-112
- supervision of program, 20-3-104

Seal, 20-3-105

Secondary education, equivalency of completion - issuance of documentation for, 20-7-131

Solicitors, acting as - prohibited, 20-1-201

Special education

- allowable cost payments, 20-7-457, 20-9-321, 20-9-347
- allowable costs, 20-7-431
- approval of classes or programs, 20-7-414

SUPERINTENDENT OF PUBLIC INSTRUCTION (Continued)

Special education (Continued)

- attendance
 - in-state residential facilities or children's psychiatric hospitals, 20-7-403, 20-7-420, 20-7-435
 - out-of-state, 20-7-403, 20-7-420, 20-7-422
- block grants, 20-9-321
- cooperatives, 20-7-457
- determination of children in need, 20-7-414
- expenditures, forms and rules for accounting, 20-7-431
- individual programs, 20-7-412
- policy recommendations and rules, 20-7-402, 20-7-403
- requirements, 20-7-401, 20-7-403
- rules, 20-7-419, 20-9-321
- state agencies, cooperation, 20-7-404
- supervision, 20-3-106, 20-7-403
- surrogate parent, 20-7-403, 20-7-463
- transportation, 20-7-420, 20-7-424, 20-7-441 — 20-7-443
- tuition, 20-5-323, 20-7-420
- Staff, 20-3-103, 20-3-104
- Student assessment, responsibilities, 20-3-106
- Succession in office, Const., VI, 6
- Successor, materials delivered to, 20-3-105
- Supervisors employed by, 20-3-103, 20-3-104
- Teachers or specialists
 - certificates, 20-4-103, 20-4-106, 20-4-109, 20-4-110
 - certification, 20-3-106, 20-4-102
 - emergency authorization, 20-4-111
 - employment relationship, termination or nonrenewal - report and investigation, 20-4-110, 20-4-112, 20-4-113
 - pupil information report forms, 20-4-301, 20-4-402
 - register, forms for, 20-4-301
 - reports, semester - forms for, 20-4-301
 - tenured, appeals from decisions, 20-4-204, 20-4-208
- Teachers' Retirement Board, member, 2-15-1010, 20-3-106
- Telecommunications network (METNET), 20-9-343
- Term of office, 20-3-102; Const., VI, 1; VI, 6
- Textbook dealers, duties, 20-3-106, 20-3-205, 20-7-604, 20-7-605, 49-3-204
- Traffic education, duties, 20-3-106, 20-7-501, 20-7-502, 20-7-506, 61-2-103
- Traffic safety program, responsibility, 61-2-103
- Vacancy in office, 20-3-102; Const., VI, 6, See also PUBLIC OFFICERS OR EMPLOYEES
- Violations, 20-1-201
- Vocational education, K-12, 20-1-101, 20-3-106, 20-7-301
 - courses and programs, approval, 20-7-303
 - money, disbursement, 20-7-305, 20-7-306
 - policies, 20-3-106, 20-7-301, 20-7-308
 - reports, 20-7-308
 - secondary, funding, 20-7-305, 20-7-306
 - staff, 20-3-103, 20-3-104, 20-7-308
 - state director, appointment, 20-7-308
- Voting program for youth, 13-22-103, 13-22-104, 13-22-106

SURETY BONDS

- Official bonds, See PUBLIC OFFICERS OR EMPLOYEES, Bonds, official
- Public contracts and contractors, 18-1-202 — 18-1-204; Title 18, chapter 2, part 2
- School enrollment, persons convicted of noncompliance, 20-5-106
- Textbook dealers, 20-7-604

SURPLUS PROPERTY, 18-5-201 — 18-5-205

- Donate property to a school district, authority to, 20-6-101

SUSPENSION OF PUPILS, 20-4-302, 20-4-402, 20-5-103, 20-5-201, 20-5-202

T

TEACHERS

- Abuse of, penalty, 20-4-303
- Administrative positions, transfer from or to, 20-4-208
- Aides, 20-3-324
- Annuity programs, Title 19, chapter 20, See RETIREMENT, Teachers' Retirement System
- Approved teacher education programs, 2-15-1522, 20-4-131, 20-4-133
- Certificates, 20-4-101, See also Certification
 - class 1 professional, 20-3-201, 20-4-106
 - class 2 standard, 20-3-201, 20-4-106, 20-4-107
 - class 3 administrative and supervisory, 20-3-201, 20-4-106
 - class 4 vocational, recreational, or adult education, 20-4-106
 - class 5 provisional, 20-4-106 — 20-4-108
 - classification, 20-4-102, 20-4-106
 - endorsements, 20-4-106, 20-4-111
 - fees, 20-4-109
 - issuance, 20-4-103, 20-4-106
 - letter of reprimand, 20-4-110
 - outstanding, validity, 20-4-107
 - registration, 20-3-205, 20-4-202
 - renewal, 20-4-102, 20-4-107, 20-4-108
 - revocation, suspension, or denial, 20-2-121, 20-4-102, 20-4-110, 20-4-111 — 20-4-114, 20-4-133
 - term and period of validity, 20-4-108
- Certification, 20-4-101, See also Certificates
 - county superintendent of schools, qualifications, 20-3-201
 - emergency, See Emergency authorization
 - policies, 20-2-121, 20-3-106, 20-4-102, 20-4-106
 - qualifications, 20-4-104
 - special education, 20-7-403
 - standards, 20-4-133
- Certification Standards and Practices Advisory Council, 2-15-1522, 20-4-109, 20-4-131 — 20-4-133
- Child abuse and neglect, reporting, See CHILD ABUSE AND NEGLECT
- Collective bargaining, 20-4-203, 39-31-103, 39-31-304
- Contracts, 20-4-110, 20-4-201, 20-4-206, 20-4-207
 - tenure, 20-4-203, 20-4-205, 20-6-410
- Corporal punishment, 20-4-302
- Counselor, K-12 specialist, 20-4-131, See COUNSELORS
- County superintendent of schools, qualifications for office, 20-3-201
- Criminal offenses, effect, 20-4-110
- Definitions, 20-1-101, 20-4-101, 20-4-131, 20-4-208
- Discipline by, 20-4-302, 20-5-201
- Dismissal, 20-3-210, 20-3-324, 20-4-110, 20-4-207
- Driver education, 20-7-501, 20-7-502
- Drug and alcohol instruction, 20-25-601 — 20-25-604
- Duties generally, 20-4-301
- Emergency authorization, 20-2-121, 20-4-111, See also Employment
 - certification, in lieu of, 20-4-101
 - fees, 20-4-109, 20-4-111
 - issuance, 20-3-106, 20-4-102
 - registration, 20-3-205, 20-4-202
- Employment
 - collective bargaining, 20-4-203, 39-31-103, 39-31-304
 - contracts, 20-4-110, 20-4-201, 20-4-206, 20-4-207
 - emergency authorization, See Emergency authorization
 - Indian studies requirements, Const., X, 1
 - religious or partisan test as prerequisite, prohibited, Const., X, 7
 - tenure, 20-4-203, 20-4-205, 20-6-410, 20-6-711
 - termination or nonrenewal, 20-4-110, 20-4-112 — 20-4-114
 - trustees, by, 20-3-324, 20-3-362, 20-4-201
 - validation, 20-4-202

TEACHERS (Continued)

- Indian studies, Const., X, 1
- In-service training, 20-1-304, 20-4-304, 20-7-114
- Interstate Agreement on Qualification of Educational Personnel, 20-4-121 — 20-4-123
- Librarians, 20-4-131
- Military leave, 10-1-603, 10-1-604
- National Board for Professional Teaching Standards, 20-4-134
- Neglect of duty, 20-4-110
- Nepotism provisions, nonapplicability when, 2-2-302
- Nontenure teachers
 - cooperatives, full service education through employment by, 20-7-456
 - reelection, acceptance, or termination, 20-3-210, 20-4-206
- Parent-teacher conferences, 20-1-304
- Physical restraint, use, 20-4-302
- Pledge of allegiance, 20-4-301, 20-7-133
- Prayer to open school day, 20-7-112
- Principals, See this subject heading generally; See also PRINCIPALS
- Professional development meetings, 20-1-304, 20-4-304
- Psychology teachers, privileged communications, 26-1-801, 26-1-808
- Public employees' retirement system, service credits transferred to or from, 19-3-511, 19-20-401, 19-20-409, 19-20-804, 19-20-902
- Pupil instruction, See PUPIL INSTRUCTION DAYS
- Pupil-instruction-related days, 20-1-304, 20-2-121
- Pupils
 - abuse of, penalty, 20-4-302
 - discipline, 20-4-302, 20-5-201
 - duty to, 20-4-301
 - privileged communications, 26-1-801, 26-1-806 — 26-1-809
 - suspension, 20-4-302, 20-5-202
 - truancy or incorrigibility, 20-4-302
- Qualifications, 20-4-104; Const., X, 1; X, 7
- Retirement, Title 19, chapters 2, 3 and 20, See PUBLIC EMPLOYEES' RETIREMENT ADMINISTRATION; PUBLIC EMPLOYEES' RETIREMENT SYSTEM; TEACHERS' RETIREMENT SYSTEM
- Salary, 20-4-202, 20-4-208, 20-4-301, 20-4-304
- Semester report, 20-3-209, 20-4-301
- Social security provisions, Title 19, chapter 1, See SOCIAL SECURITY
- Special education, 20-4-202, 20-7-403, 20-7-431
- Specialists, certification, 20-4-101, 20-4-131, See also Certificates; Certification
- Standards, 20-4-133
- Student teachers, 20-4-101
- Substitute teachers, 2-2-302, 19-20-302, 19-20-804
- Suspension, 20-4-207
- Teachers' Retirement Board, membership on, 2-15-1010
- Telecommunications network (METNET), 20-9-343
- Tenure, 20-4-203, 20-4-205, 20-6-410, 20-6-711
- Tenure teachers
 - administrative positions, transfer from or to, 20-4-208
 - appeals, 20-3-210, 20-4-204, 20-4-208
 - cooperatives, full service education - employment by, 20-7-456
 - district consolidation or annexation, protection, 20-6-410
 - K-12 districts, protection, 20-6-711
 - reelection and acceptance, 20-4-205
 - termination of services, 20-3-210, 20-4-203, 20-4-204
- Termination, 20-4-204
 - appeals from, 20-3-210, 20-4-206
 - nontenure teachers, 20-3-210, 20-4-206
 - tenure teachers, 20-3-210, 20-4-203, 20-4-204
 - trustees, by, 20-3-324, 20-4-110, 20-4-204
- Traffic education, 20-7-501, 20-7-502
- Union organizations, 39-31-103, 39-31-304

- TEACHERS' RETIREMENT SYSTEM**, See **RETIREMENT**
- TECHNOLOGY, AID FOR ACQUISITION**, 20-9-375
- TELECOMMUNICATIONS NETWORK (METNET)**, 20-9-343
- TELECOMMUNICATIONS RATE DISCOUNT**, PSC, 69-3-846, 69-3-856, 69-3-857
- TENURE**, See **TEACHERS**
- TEXTBOOK DEALERS**, 20-1-101
- Competition, restricting penalty, 20-7-607
 - Complaints against, 20-3-106, 20-3-205, 20-7-605
 - Emoluments or other inducements, penalty for offering, 20-7-608
 - Licenses, 20-3-106, 20-7-604, 20-7-606, 20-7-607, 49-3-204
 - Samples, 20-7-608
 - Surety bond, 20-7-604, 20-7-605, 20-7-607
- TEXTBOOKS**, 20-1-101, 20-3-324, 20-7-601
- Damage policy, 20-7-601
 - Free to pupils, to be, 20-7-601
 - Home schools, 20-5-111
 - Purchase, 20-7-601, 20-7-603
 - Selection and adoption, 20-3-205, 20-4-402, 20-7-602, 20-7-603
 - Sold to pupils when, 20-7-601
 - Special education budget, allowable costs, 20-7-431
- TOBACCO**, See **CIGARETTES; SMOKING IN PUBLIC PLACES**
- TRAFFIC EDUCATION**
- Administration of program, 20-3-106
 - Course, 20-7-501 — 20-7-503, 61-2-103
 - Definitions, 20-7-501
 - Duties of State Superintendent, 20-7-502
 - Fund, 20-9-510, 61-2-103
 - establishment and administration, 20-3-324
 - nonbudgeted, 20-7-507, 20-9-201, 20-9-510
 - Justice, department of duties, 61-2-103
 - License or permit to drive, issued when, 61-5-105, 61-5-106
 - State administration, 20-7-506
 - State traffic education account, 20-7-501, 20-7-502, 20-7-504 — 20-7-506; Const., VIII, 6
 - Teachers, 20-7-501, 20-7-502, 61-2-103
- TRAFFIC PATROLS**, 20-1-408, 20-3-106, 61-8-502
- TRAFFIC SAFETY PROGRAM**, 61-2-101 to 61-2-108
- County drinking and driving prevention programs, 61-2-106 — 61-2-108
- TRANSFER OF SCHOOL DISTRICT TERRITORY**
- Elementary, 20-6-105
 - time limits, 20-6-202
 - transfer between districts by agreement, 20-6-214
 - Hearing, 20-6-105
 - petition, requirements, 20-6-105
 - High school, 20-6-105
 - time limits, 20-6-314
 - transfer between districts by agreement, 20-6-322
- TRANSPORTATION**
- Bid requirements, 20-10-110, 20-10-125
 - Block grants, 20-9-632
 - Budgeting for, See **FINANCE**, Transportation fund
 - Bus depreciation reserve fund and fund budget, 20-9-201, 20-10-147
 - Bus drivers
 - certification, 20-3-205, 20-10-103
 - driver's license requirements, 20-10-103
 - employment or dismissal, 20-3-324
 - qualifications, 20-10-103, 20-10-111, 20-10-124

TRANSPORTATION (Continued)

- Buses, 20-10-101, 61-1-116, 61-1-134
 - bids not required when, 20-10-110
 - bond issues for purchase of, See BONDS AND BOND ISSUES, generally
 - budgeting for, See FINANCE, Transportation fund
 - commercial motor vehicle, 61-1-134
 - driver's license, 61-1-135
 - contracts for purchase, 20-10-110
 - depreciation reserve fund and fund budget, 20-10-147
 - design and construction standards, 20-2-121, 20-10-111
 - inspections, 61-9-502
 - insurance, 20-10-107, 20-10-109
 - lighting equipment, 20-10-111
 - flashing lights and signal lamps, 20-10-111, 61-8-351, 61-9-402
 - special, prohibited operation, 61-8-352
 - meeting and passing, 61-8-351
 - operation suspended when, 20-10-104
 - passing, 61-8-351
 - purchase or rental, 20-10-107, 20-10-110
 - radios, two-way, 20-10-107, 20-10-108
 - railroad grade crossings, stopping at, 61-8-349
 - rated capacity, 20-10-111, 20-10-141
 - requirements, 20-10-102
 - riding time limitations, 20-10-121
 - seating capacity, 20-10-111, 20-10-141
 - standards and regulations, 20-2-121, 20-10-111
 - time on, limitations, 20-10-121
 - traffic laws and safety, See TRAFFIC EDUCATION
- Bus route, definition, 20-10-101
- Closure of schools, 20-6-509
 - Contracts, 20-3-205, 20-10-104, 20-10-110, 20-10-124, 20-10-125, 20-10-143, See also
 - Individual transportation; Private party contracts
 - budget amendment, attachment, 20-9-165, 20-10-145
 - budgeting for, See FINANCE, Transportation fund
 - prevailing wage, 18-2-401 — 18-2-404, 18-2-421 — 18-2-424, 18-2-431, 18-2-432
- Controversies, 20-3-107, 20-10-112, 20-10-132
- County Transportation Committee, See also COUNTY TRANSPORTATION COMMITTEE
 - duties, 20-10-132
 - membership, 20-10-131
- Deaf and Blind, Montana School for the, 20-8-121
- Definitions, 20-10-101, 20-10-111
- Discretionary provisions, 20-10-122
- Elections, See ELECTIONS
- Fuel tax refund, 15-70-356
- Home study as, 20-10-121, 20-10-125, 20-10-142
- Individual transportation, See also Contracts; Private party contracts
 - contracts, 20-10-112, 20-10-121, 20-10-124, 20-10-125, 20-10-142
 - reimbursements, See Reimbursements
- Insurance, 20-10-107, 20-10-109
- Isolation, schedule rates, 20-10-112
- Levy requirements, 20-10-144
- Liability insurance, 20-10-109
- Mileage, 20-10-106, 20-10-141, 20-10-142, See also Routing
- Nonpublic school children, 20-10-123
- Out-of-district attendance agreements, 20-5-320 — 20-5-324, 20-10-105, 20-10-144, 20-10-146
- Passenger points, 20-10-127
- Policies, 20-10-104, 20-10-111, 20-10-112
- Private party contracts, 20-10-107, 20-10-124, 20-10-125, See also Contracts; Individual transportation
- Private school children, 20-10-123
- Rate schedules, 20-10-141, 20-10-142

TRANSPORTATION (Continued)

Reimbursements

- county, 20-3-205, 20-10-144, 20-10-146
- denied, when, 20-10-104
- disbursement, 20-10-112
- forfeiture when, 20-10-104
- home study, 20-10-125, 20-10-142
- increased, 20-10-132, 20-10-142
- legislature, authority and appropriation, 20-10-142, 20-10-145
- maximum, 20-10-141, 20-10-142
- nonbus mileage, 20-10-141
- nonoperating fund budget, subtracted from, 20-9-506
- room and board, 20-10-142
- special education children, 20-7-442, 20-7-443, 20-10-144, 20-10-146
- state, 20-3-205, 20-10-144, 20-10-145

Revenues for, computation, 20-10-144

Routing, 20-10-101, 20-10-112, 20-10-132, 20-10-141, See also Mileage

Rules, 20-3-106, 20-10-104, 20-10-112

Service areas, 20-10-111, 20-10-126, 20-10-132, 20-10-141

boundary, 20-10-126

Special education children, 20-7-419 — 20-7-421, 20-7-424, 20-7-431, 20-7-441 — 20-7-443, 20-10-144, 20-10-146

Supervisor for, 20-3-104

Transportation fund, See FINANCE

Transportees

- eligible, 20-10-101, 20-10-105, 20-10-111, 20-10-121
- ineligible, 20-10-122

Types provided, 20-10-121

Violations, 20-10-104

TRANSPORTATION FUND, See FINANCE**TREASURER**, See COUNTY TREASURER**TRUANCY**, 20-4-302, 20-5-106**TRUSTEES**, See also DISTRICTS AND TRUSTEES

Absence from district, trustees — effect, 20-3-308

Actions

- collective, to be, 20-3-301, 20-3-322, 20-3-362
- immunity from, when, 20-4-110

Agents, trustees acting as — prohibited, 20-1-201

Appeals by pupil or pupil's parent or guardian, 20-5-201

Appeals by trustees, 20-3-210, 20-4-208

Appointment of relative, 2-2-302

Appointment of trustees, 20-3-307, 20-3-309

additional positions, 20-3-353, 20-3-354

county high school unification, 20-6-313

districts

- annexation, 20-6-422
- consolidation, 20-6-423
- new districts, creation, 20-3-312
- high school, classification changes, 20-6-301

Chairman of trustees

- bonds, execution, 20-9-433
- budget amendment, signing, 20-9-165
- budget form, signing, 20-9-133
- county high school principal, execution of contract, 20-4-401
- district superintendent, execution of contract, 20-4-401
- joint board, 20-3-361
- selection, 20-3-321
- teacher contracts, execution, 20-4-201
- transportation contracts, signing, 20-10-124
- warrants, countersignature, 20-9-221

TRUSTEES (Continued)

- Clerk of the district
 - appointment, 20-3-321, 20-3-325
 - election administrator, as, 13-1-101
 - resignation of trustee, 2-16-502
 - successor, delivering materials to, 20-1-203
 - trustees
 - nominations for candidacy, submission to, 20-3-305, 20-3-344
 - positions, publication of notice for increase, 20-3-341
- Conduct school on Saturday, 20-3-324
- Conflict of interest, trustees, 20-9-204
- Contracts, 20-6-101
- Controversy appeals
 - joint boards, proration of expenses, 20-3-106, 20-3-362
 - teachers, 20-4-204, 20-4-206, 20-4-208
- Curriculum for schools, establishment and maintenance, 20-3-324
- Death of trustee, 20-3-308
- Declaration of emergency by, 20-9-806
- Disclose assessment data, 20-3-324
- Election of trustees, 20-3-301, See also ELECTIONS
 - by acclamation, 20-3-313
- Elections, duties, See School elections; See also ELECTIONS
- Eligibility for office of trustee, 20-3-305
- Emergency, unforeseen
 - bid requirements, exception, 20-9-204
 - meetings, 20-3-322
- Executive officer of trustees, 20-4-402
- Fair Practices, Code of, Title 49, chapter 3, See DISCRIMINATION, Government, state and local
- Financial reports, Title 2, chapter 7, part 5, See AUDITS
- Fines for trustees' violations, 20-1-201, 20-1-203, 20-6-624, 20-9-435
- Flag, American — procurement and display, 20-3-324, 20-7-133
- Governance by trustees, 20-3-323
- Hearings, 20-3-337, 20-4-204, 20-4-207, 20-4-208, 20-5-110
- Immunity from liability
 - trustees, 2-9-111, 20-3-332, 20-4-110
- Investment, See Public funds
- Joint boards of trustees
 - budget procedures, See FINANCE, Joint districts
 - clerk, 20-3-206
 - dissolution when, 20-3-361
 - district superintendent, appointment, 20-3-362, 20-4-401
 - existence, period of, 20-3-361
 - junior high schools, opening or closing, 20-3-362, 20-6-505, 20-6-509
 - organization and officers, 20-3-361
 - powers, 20-3-362
 - secretary, compensation, 20-3-311, 20-3-361
 - special education services, 20-3-362, 20-7-457
 - teachers or specialists, employment, 20-3-362, 20-4-201
 - voting membership, 20-3-361
- K-12 districts, 20-6-701 — 20-6-703
- Legal adviser, 20-1-204, 20-1-205, 20-9-204, 20-9-436
- Liability, 2-9-111, 20-3-332
- Meetings of trustees, 20-3-322
 - bond issue petitions, consideration, 20-9-425
 - budget, 20-3-322, 20-9-115, 20-9-131
 - budget amendment, 20-9-163, 20-9-165
 - county superintendent of schools, called by, 20-3-205, 20-3-311
 - elections, to call, 20-20-203
 - failure to attend, 20-3-308
 - minutes, 20-3-323, 20-6-703
 - notice, 20-3-322
 - organization, 20-3-321, 20-3-322

TRUSTEES (Continued)

- Meetings of trustees (Continued)
 - teachers, tenured — termination hearings, 20-4-204
 - transportation contracts, for, 20-10-125
 - travel expenses, 20-3-311
- Neglect of duty by trustees, 20-9-444
- Nepotism provisions, nonapplicability when, 2-2-302
- Notice of intent to dispose of property, 20-6-604
- Oath of office, trustees, 20-1-202, 20-3-205, 20-3-307, 20-3-309
- Out-of-district attendance agreements, 20-5-320 — 20-5-324
- Policies, prescription and enforcement, 20-3-323
- Positions of trustees
 - additional, 20-3-302, 20-3-341, 20-3-343, 20-3-352, 20-6-201, 20-6-301
 - redetermination, 20-3-205, 20-3-354
 - boundary changes, effect, 20-3-312
 - elementary districts, 20-3-302, 20-3-341, 20-3-352, 20-6-201
 - high school districts, 20-3-302, 20-3-351
 - additional, request and determination, 20-3-205, 20-3-352, 20-6-301, 20-6-313
 - alternative method of election, 20-3-352
 - county high school, operating, 20-3-356
 - nominating districts, establishment and purpose, 20-3-205, 20-3-353, 20-3-354, 20-3-356, 20-6-313
 - nonvoting, establishment when, 20-3-352
 - K-12 districts, 20-6-702
 - number prescribed, 20-3-301, 20-3-341, 20-3-351, 20-6-702
 - reduction, 20-3-341
 - term, See Term of office of trustee
 - vacated, See Vacancy in office of trustee
 - variance in number, 20-3-301, 20-3-341, 20-3-351
- Powers and duties of trustees, 20-3-324, 20-6-101
 - actions to be collective, 20-3-301, 20-3-322, 20-3-362
 - boundary changes, effect, 20-3-312
 - joint boards, 20-3-362
- Property, authority, 20-3-324, 20-6-417, 20-6-602, 20-6-604, 20-6-609, 20-6-703, See also PROPERTY
- Public funds, See also LOCAL GOVERNMENT, Public funds
 - deposit in financial institutions, 7-6-201
 - investment, 7-6-202, 7-6-204, 7-6-206, 7-6-204
 - repurchase agreements - limitations, 7-6-202, 7-6-205, 7-6-213
- Records transfer policy, 20-1-213
- Removal of trustees from office, 20-3-308, 20-3-310, 20-3-332, 20-7-608
- Residence of trustee changed, effect, 20-3-308
- Resignation of trustee, 2-16-502, 20-3-308
- School elections
 - canvass of votes, 20-20-415
 - certificate of, issuance, 20-20-416
 - county election administrator requested to conduct, 20-20-401, 20-20-417
 - duties generally, 20-3-324, 20-20-401
 - electronic voting systems, 20-20-421
 - judges, 20-20-107, 20-20-203
 - notice, 20-20-204
 - poll hours, places, 13-1-106, 20-20-106, 20-20-203
 - resolutions for, 20-20-201, 20-20-203
 - voting machines, 20-20-421; Title 13, chapter 17
- School finance, duties generally, 20-3-324, See FINANCE
- Single-member trustee districts, 20-3-336 — 20-3-338
- State-Tribal Cooperative Agreements Act, Title 18, chapter 11, part 1
- Student financial institution, establish, 20-3-324, 32-1-115
- Term of office of trustee
 - additional positions, 20-3-355
 - elementary districts, 20-3-342, 20-3-343
 - expiration, legislative intent, 20-3-302

TRUSTEES (Continued)

Term of office of trustee (Continued)

- generally, 20-3-301
- lot, drawn by — when, 20-3-342, 20-3-343, 20-3-352, 20-3-355
- vacated position, election or appointment to fill, 20-3-303, 20-3-309

Transportation, duties generally, See TRANSPORTATION

Vacancy in office of trustee, 20-3-308, 20-3-309

- election to fill, See ELECTIONS, Trustees
- term after election or appointment, 20-3-303, 20-3-309
- unfilled when, 20-6-301

Violations by trustees

- agents or solicitors, acting as, 20-1-201
- bonds, nonpayment of sale money to county treasurer — penalty, 20-9-435
- building plans and specifications, violations concerning, 20-6-624
- contracts, pecuniary interest, 20-9-204
- district, employment by, 20-9-204
- misappropriation of funds, 20-1-203, 20-3-332
- successor, nondeliverance of materials to, 20-1-203
- supplies, association with furnishing to schools, 20-9-204
- teachers, employment relationship — report of termination or nonrenewal, failure to make, 20-4-114
- textbook dealers' emoluments or inducements, acceptance, 20-7-608

TUITION

- Administration of provisions, 20-3-324
- Admittance of child to school, generally, 20-5-101
- Adult education, 20-7-704
- Annexing district, assumption, 20-6-413
- Appeals, 20-3-210, 20-5-304
- Applications, 20-3-205, 20-3-210
- Closure of schools, 20-6-509
- Consolidated district, assumption, 20-6-413
- County basic special tax revenue, county retention — determination, 20-9-333
- Discontinued district, debt obligation, 20-6-413
- Enrollment, compulsory — nonapplicability, 20-5-102
- Fund, 20-3-324
 - budget and levy requirements, 20-3-324
 - budgeted fund, as, 20-9-201, See also FINANCE, Funds generally
 - out-of-district attendance obligations, 20-5-324
- Generally, 20-5-314 — 20-5-324
- Homeless children, 20-5-101
- K-12 districts, 20-6-702
- Levy requirement, 20-6-413
- Nonoperating fund, purpose, 20-9-505
- Nonresident children, 20-5-101
- Notification, 20-3-205
- Out-of-district attendance agreements, 20-5-320 — 20-5-324, 20-10-105
- Payments, state agency placement, 20-5-316, 20-5-321, 20-5-323, 20-5-324, 20-9-334, 20-7-403, 20-7-420, 20-7-422
- Property tax reduction, certain payments available for, 20-9-141
- Rates, 20-5-314, 20-5-320, 20-5-321, 20-5-324
- Reciprocal attendance agreements, 20-3-106, 20-5-314
- Report requirements, 20-3-205
- Special education, 20-7-419 — 20-7-421, 20-7-424, 20-7-441
 - out-of-district attendance agreements, 20-5-321, 20-5-323, 20-5-324
- Waiver, 20-5-320, 20-5-321

U**UNEMPLOYMENT INSURANCE**

- Retirement fund to pay employer's contributions, 20-9-501
- Special education allowable costs, 20-7-431, 20-7-435

V

VETERANS

- Diplomas, honorary, 20-3-109
- Employment preference, 39-29-101 to 39-29-104, 39-29-111, 39-29-112

VISITATION OF SCHOOLS, 20-3-207, 20-3-324**VISUALLY DISABLED PERSONS**, See **DISABILITIES**, **SPECIAL EDUCATION****VOCATIONAL EDUCATION, K-12**

- Administration, 20-3-103, 20-7-302.1
- Adult education, Title 20, chapter 7, part 7
- Appropriations, 20-7-301, 20-7-305
- Congressional acts, acceptance, 20-7-321
- Courses and programs, 20-3-324, 20-7-301, 20-7-303, 20-7-305
- Curriculum guides, 20-7-302.1
- Definitions, 20-1-101, 20-7-305
- Eligible agency, 20-7-329
- Evaluation, policies for, 20-7-301
- Executive officer for, 20-3-106, 20-7-301
- Governing agent, 20-3-106, 20-7-301
- Instructor qualifications, policies for, 20-7-301
- Intent, 20-7-328
- Money
 - apportionment, basis for — policies, 20-7-301, 20-7-306
 - career and vocational/technical education programs, 20-7-305, 20-7-306
 - federal, 20-7-301, 20-7-321
 - secondary vocational education, 20-7-305, 20-7-306
- Policies, 20-3-106, 20-7-301, 20-7-308
- Records and reports, 20-7-308
- School districts, assistance to, 20-7-308
- State director, appointment and duties, 20-7-308
- State plan, development, 20-7-301, 20-7-330
- Superintendent, assistant, 20-3-104
- Supervision, staff for, 20-3-103, 20-3-104, 20-7-308

VOTING PROGRAM FOR YOUTH, 13-22-101 — 13-22-108, See also **ELECTIONS**

W

WAGES

- Collective bargaining, subject to, 39-31-305
- Prevailing wages, public contracts, 18-2-401 — 18-2-404, 18-2-421 — 18-2-424, 18-2-431, 18-2-432
- Social security provisions, Title 19, chapter 1, See **SOCIAL SECURITY**

WARRANTS

- Adult education fund, 20-7-713
- Bond issue limitations, 20-9-406
- Cancellation when, 20-9-223
- Clearing account funds, disbursement, 20-9-220
- Countersignatures, 20-9-221
- County warrants, 7-6-2601 — 7-6-2607, 7-6-2701
- Debt service fund, 20-9-438, 20-9-439
- Destruction when, 20-9-215
- Duplicate, 20-9-223
- Facsimile signatures, 20-9-221
- General fund warrants, 20-9-104
- Interest assessment on overdue accounts, 20-9-225 — 20-9-227
- Interlocal cooperating agencies, financial support transferred by, 20-9-704
- Investments in, 7-6-2701, 20-9-604
- Issuance, 20-9-133, 20-9-213, 20-9-221, 20-9-223
- K-12 districts, transition after formation, 20-6-703
- Outstanding, 20-6-313, 20-9-223
- Payment, 20-9-212

WARRANTS (Continued)

- Registration, 7-6-2701, 20-6-313, 20-9-212, 20-9-347, 20-9-406
- Retirement fund warrants, 20-9-501
- Salary warrants, 20-4-301
- Transportation fund, 20-10-144
- Unpaid, interest, 7-6-2604

WEB SITES

- See Preface

Y**YOUTH CARE FACILITIES**

- Provision of services, 52-2-617

YOUTH COURT

- Citation of Youth Court Act, 41-5-101
- Confidentiality, 41-5-125, 41-5-601
- County interdisciplinary child information team, 52-2-211
- Definitions, 41-5-101 — 41-5-103
- Disposition, 41-5-1301, 41-5-1302
- Drug use/criminal activity, required to notify school, 41-5-215
- Education records release, 41-5-215
- Funding, 41-5-104
- Habitual Truancy, 41-5-103
- Jurisdiction, 41-5-203
- Notification of school, 41-5-215
- Purpose, 41-5-102
- Records, 41-5-215, 41-5-1524
- School records release, FERPA requirements, 20-1-213, 41-5-1707
- Shelter care criteria, 41-5-342
 - school use, 41-5-1801
- Youth assessment, 41-5-103, 41-5-343, 41-5-1201, 41-5-1206
- Youth detention centers
 - requirement to provide education services, 41-5-1802 — 41-5-1805
 - payment of education costs, responsibility for, 20-9-130, 41-5-1807

YOUTH EMPLOYMENT PROGRAM, See MONTANA SUMMER YOUTH EMPLOYMENT PROGRAM